रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 34] नई दिल्ली, सितम्बर 12—सितम्बर 18, 2021 शनिवार/ भाद्र 21—भाद्र 27, 1943
No. 34] NEW DELHI, SEPTEMBER 12—SEPTEMBER 18, 2021, SATURDAY/BHADRA 21–BHADRA 27, 1943

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 06/2006) को प्रकाशित करती है।

[सं. एल-12012/121/2005-आईआर (बी-II)]
राजेन्द्र सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th September, 2021

S.O. 610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/121/2005-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT Kanpur

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 06/2006

Ref. No. L-12012/121/2005-IR(B-II) dated 06.02.2006

BETWEEN :

Shri Anil Kumar Agnihotri, S/o Shri Suresh Chandra Agnihotri
1160E, Shyam Nagar, Kanpur (UP)

AND

The Senior Regional Manager
Punjab National Bank
Regional Office, Birhana Road, Kanpur (UP)

AWARD

1. By order No. L-12012/121/2005-IR(B-II) dated 06.02.2006, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF PUNJAB NATIONAL BANK, KANPUR IN ORDERING REMOVAL OF SERVICES OF SHRI ANIL KUMAR AGNIHOTRI, CTO VIDE ORDER NO. R.M.K.D.A.C. 126 DATED 09.02.2004 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED?"

3. The points to be answered in this proceeding are as follows:

(i) Whether the action of the management of Punjab National Bank, Kanpur ordering removal of services of claimant (Anil Kumar Agnihotri) by order no. R.M.K.D.A.C. 126 dated 09.02.2004 is legally justifiable.

(ii) To what relief the claimant is entitled.

Point No. 1:

4. For the sake of clarity it is stated that during the pendency of this proceeding original claimant/petitioner Anil Kumar Agnihotri expired on 11.02.2010 and his widow Smt. Prerna Agnihotri has been allowed to participate in reference hearings. Original petitioner has submitted the claim statement stating that he joined the employer bank in the year 1978 as clerk-cum-cashier and had served in the branches at Subhash Nagar, Krishna Nagar and lastly at Juhi branch as computer terminal operator. He has assailed the order of removal from job under the PNB stating that false and unfounded charges were levelled against the claimant, which were denied by him. However, an Enquiry Officer was appointed to enquire into the charges levelled against the claimant. The Enquiry Officer held ex-parte enquiry without affording opportunity of hearing to the claimant. The enquiry so held by the Enquiry Officer was neither fair nor proper and was against the principles of natural justice. The Enquiry Officer conducted the enquiry with a closed mind. As such, the findings recorded by him are perverse and the entire enquiry is liable to be vitiated.

Petitioner has further mentioned that the Disciplinary Authority passed the dismissal order without applying his mind to the facts and circumstances of the case. The Disciplinary Authority completely over looked to consider that the findings of the Enquiry Officer are based on misreading of the evidence and has blindly relied upon the report of the Enquiry Officer, who arbitrarily held that the charges are proved. Similarly the appellate authority rejected the appeal without considering the facts and circumstances of the case, which clearly go to show that the claimant was innocent.

Petitioner further mentioned that even if it is assumed that claimant (deceased) is guilty of the charges levelled against him even then the extreme penalty of dismissal is wholly unwarranted and is shockingly disproportionate to the charges alleged to be proved. On this ground also the dismissal of the claimant from service is unjustified, illegal and void-ab-initio. The penalty of dismissal being dis-proportionate to the gravity of the alleged misconduct is violative of Article 14 and 21 of the Constitution of India.

5. On behalf of the employer PNB Bank, written statement has been submitted with specific averments that Shri Anil Kumar Agnihotri while working as CTO at BO: Juhi, Kanpur opened an 'Anupam' account for Rs. 10,000/- by deposit of cash. While entering the FD value Shri Anil Kumar Agnihotri entered the amount as Rs. 1,00,000/- (Rs. One Lakh) instead of Rs. 10,000/- (Rs. Ten Thousand) resulting in a drawing power of Rs. 95,000/- and subsequently withdrew the amount by debit of Rs. 8,000/-, Rs. 7,000/-, Rs. 5,000/-, Rs. 40,000/-, Rs. 10,000/-, Rs. 10,000/- and Rs. 10,000/- most of them being by self cheques. In fact, he committed fraud in his own account for his own financial gain. The total amount of fraud involved Was Rs. 75,482.27. Though Shri Agnihotri deposited the amount of fraud but the same does not absolve him of the fraud/misconduct. The punishment of removal from service by the Disciplinary Authority is commensurate with the act of misconduct/fraud. The bank has not violated any Article of Constitution including Article 14 and 21 of the Constitution of India. It is well settled that in departmental enquiries strict rules of evidence are not followed.

The Disciplinary Authority as well as the Appellate Authority considered all records produced during the course of Departmental Enquiry including past service of claimant while awarding the punishment and at the time of considering his appeal. Shri Agnihotri was afforded every possible opportunity to defend his case. The orders of Disciplinary Authority of punishment of removal is justified, legal and is commensurate with the gross misconduct committed by the claimant.

6. Be it stated here that by order dated 12.10.2015 this Tribunal upheld fairness of departmental enquiry and it appears the said order has not been challenged on behalf of the legal representative of the deceased petitioner workman.

7. At the time of hearing the AR of the workman submitted that the employee since 1978 has an unblemished record of service. It has been pointed out that the charge sheet was submitted by the senior Manager who was also appointed as the Presenting Officer (Prosecutor) in the departmental proceedings which amounted to glaring violation of natural justice. This point was not raised by the petitioner when he has participated in the disciplinary proceedings (D.P.) and while preferring appeal. In the scenario this point has also lost its force. Needless to say the petitioner has participated in the D.P. and he had admitted his guilt. It is inconceivable that any prejudice was caused to the petitioner shattering the sanctity of the D.P. It is submitted on behalf of the petitioner that the allegation of fraud by Shri Anil Kumar Agnihotri has not at all been established.

8. It is pointed out that every employee was assigned with a unique ID and own password and the allegation of use of password of the manager by the delinquent was absurd and a clerk has no power to sanction loan against fixed deposit. It is further submitted that fraud has not been proved in the court of law. To add to these points, it has been submitted that the enquiry report was unclear whetherunder 5(a) or under 5(j) of the Bipartite Settlement, the delinquent was prosecuted. It is submitted that Anil Kumar Agnihotri had to deposit the amount with interest and no loss was suffered by the bank. Neither the inquiry officer nor the appellate authority considered the aspect of generation of exception report which normally includes all risks and the exception report was not generated by the clerical staff. With submissions as above it is pleaded that the findings in the inquiry are imaginary without proper application of mind. On referring to the record it is found that the inquiry officer in course of inquiry referring to the documentary materials held that in view of the documents and deposition of witnesses presented and analysis of the same that Shri Anil Kumar Agnihotri, CTO(U/S) BO: Juhi with an intention to defraud the Bank opened account underAnupam Deposit Scheme of the Bank by depositing cash of Rs. 10,000/- on 01.01.2003. Shri Agnihotri, misusing the authority delegated to him while working as CTO entered the value of security i.e. amount of FD as Rs. 1,00,000/- instead of actual amount of Rs. 10,000/- so that drawing power in the account could inflate to Rs. 95,000/- from genuine/admissible amount of Rs. 9,500/- in respect of his deposit of Rs. 10,000/-. His intention to defraud the Bank is reflected/proved by the fact that he withdrew the amount from OD account through the cheques drawn in favour of self along with the bearer account reached at Rs. 84982.27 as on 20.01.2003 i.e. an amount of Rs. 85482.27 in excess of admissible limit waswithdrawn by Shri Agnihotri within a short span of 20 days from the opening

of account. Shri Agnihotri also deposited a sum of Rs. 50,000/- (Rs. Fifty Thousands only) in cash in his OD account No. 1408 on 01.01.2003 i.e. the date of opening of FD Anupam A/c with Rs. 10,000/- in cash. On that date Shri Agnihotri was indebted to Punjab National Bank VetanBhogiSahakariRinSamiti Ltd., to the extent of Rs. 1,80,660/- (Rs. One Lakh Eighty Thousand Six Hundred Sixty only) on account of loan of Rs. 1.00 Lac availed by him on 10.06.1997 and due to the fact that no instalment was paid after 13.11.2001 towards the loan. This shows insufficient means available with Shri Agnihotri.

9. The aforesaid findings recorded by inquiring officer have also been concurred by the appellate authority, Shri Anil Kumar Agnihotri after making of the enhanced false entry of Rupees One lakh in place of actual deposit of Rupees Ten Thousand has withdrawn Rupees Sixty-FiveThousand to himself by cheques drawn in favour of self. The aforesaid conduct otherwise speaks of grave misconduct of Anil Kumar Agnihotri. If such conduct is done by all the bank employees with impunity there will be a devastating collapse of the banking organization.

10. In the matter *(2006) IILLJ 401 Mad Palaniappan R.M. vs. Transport Commissioner &ors.*, a lenient view was taken by Hon'ble Madras High Court with observations:

> *"No doubt, the shameful act committed by the petitioner is so serious in nature. However, the extreme punishment of dismissal from service imposed on the petitioner, in our view, is disproportionate for the reason that the main object and thrust behind awarding of a punishment to an offender is only to men him and not to strangulate. Otherwise, the very purpose of awarding punishment would not be served". In the aforesaid case the order of dismissal was disapproved, by the Hon'ble Madras High Court.''*

In citation *(1997) IILLJ 947 Mad. S. Murugudhas vs State Bank of India & anr.*, it was observed by the Hon'ble Madras High Court in the following words:

> *"Both the appellant and the bank management had spent about 12 years as on date in fighting the litigation in one forum or the other. The appellant has got another about 13 to 14 years of service, in the bank. The appellant has not played with any customer's account amount and the only charge was that he claimed reimbursement of some amount alleged to have been spent by him. We are of the view, for the misconduct committed by him, such deterrent punishment of dismissal is not called for. It is also pointed out on behalf of the appellant that in respect of other employees who committed acts of misconduct similar in nature as committed by him, only minor punishment was imposed. But such contention of the appellant was brushed aside by the management simply on the ground that the acts committed by the appellant are not comparable with that of the others. We are of the view that the acts committed by the appellant are not comparable with that of the others. We are of the view that the impositionof such an extreme and harsh punishment would once for all ruin the career of the employee. Therefore, we feel is that the appellant should be made to forego the entire salary for the period form the date of issuing charge memo till today. Such a punishment, in our opinion would meet the ends of justice. The management also should feel happy that for wrongly claiming a sum of Rs. 2,728/- the appellant is made to forego his entire salary for the period mentioned above. The appellant also will not repeat such a mistake since he had been made to forego the salary for the period in question and at the same time spending for his litigation by borrowing monies from other sources, and also for the maintenance expenses of the family. As rightly pointed out by the Additional Solicitor General, absolute integrity is essential from persons who are working in banking sector. Therefore, the proper punishment in our opinion, would be reinstatement inservice with continuity of service but without back wages for the period in question. We make it clear that the punishment imposed by the authorities below has been modified as indicated above on the basis of the facts and circumstances of this case. Therefore, this judgment cannot be quoted as a precedent by others working in the same bank."*

In *Writ Petition No. 425 of 2012 The Managing Director, Tamil Nadu State Transport Corporation Ltd, Salem vs. S. Kalaiselvan and Presiding Officer, Labour Court, Salem.* It was observed by the Hon'ble Madras High Court in the following words:

> *"It is settled law that even if the employee does not question the domestic enquiry and gives up the fairness of enquiry, still the Labour Court has got powers under Section 11-A of the Industrial Disputes Act to re-appreciate the evidence and come to a different conclusion. The Tribunal/Labour Courts are not like Civil Courts to only interpret the contract of service. It can also create a new contract between the employer and the employee."*

It was observed in case *W.P. No. 16677 of 2004 & WPMP No. 19724 of 2004; WVMP No. 403 of 2005 and WMP 15796 of 2010, The Chief General Manager, State Bank of India, Local Head Office, Chennai vs. Central Government Industrial Tribunal cum Labour Court, Chennai and Sri A. Bose* it is observed:

> *"A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all*

possible stems to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty devotions and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik 1996 (9) SCC 69, it is no defence available to say that there was no loss or profit resulted in case, which the officer/employee acted without authority. The very discipline of an organization more particular a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach and were serious. These aspects do not appear to have been kept in view by the High Court."

In *Union of India vs. Parma Nand (1989) 2 SCR 19: AIR 1989 SC 1185* this Court observed as under:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishmentcannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

11. In view of the discussions stated above it can be summarized that this Industrial Tribunal cannot reasonably alter the punishment imposed by disciplinary authority unless the punishment is shockingly disproportionate to the magnitude of delinquency. In the scenario in this proceeding removal from service with other benefits as stated in the final order and confirmed in appellate order cannot be held to be shockingly disproportionate. This point is answered against the claimant petitioner.

12. In the result the whole reference is answered against the substituted claimant.

13. Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, देहरादून डिवीजन, देहरादून- (उत्तराखंड) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री गौतम कुमार, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 89/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल- 42012/149/2014-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 611.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2015) of the Central Government Industrial Tribunal-cum -Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending, Archeological Survey of India, Dehradun Division, Dehradun-(Uttarakhand) and Shri Gautam Kumar, worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-42012/149/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 89/2015

Date of Passing Award- 19th August, 2021

Between:

Shri Gautam Kumar S/o Shri Sudesh Chand
R/o H. No. 943, Near Ganeshpur Nala,
Roorkee, Dist-Haridwar,
Haridwar-247663. ...Workman

Versus

The Superintending Archaeologist,
Archeological Survey of India,
Dehradun Division,
Dehradun-248001. ...Management

Appearances:-

Claimant in person (A/R) : For the Workman

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Archeological Survey of India and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42012/149/2014 (IR(DU) dated 10.12.2014 to this tribunal for adjudication to the following effect.

> "Whether the management of Archeological Survey of India, Dehradun is wrong in denying the continuation of Shri Gautam Kumar and done against the provisions of law?If so, what remedies lies with the workman and what specific steps should be taken by the management to reinstate him with specific benefits?''

As per the claim statement the claimant was working as a Safaikaramchari with the Archeological Survey of India Dehradun and posted at the Monument Site having name British Cemetery situated as Roorkee, Dehradun. He had worked continuously for 7 years preceding to his illegal termination on 01.07.2014 and during that period he had acquired temporary status by working 240 days in a calendar year preceding to the date of termination. The respondent without complying with the provisions of section 25F of the ID Act since terminated his service on 01.07.2014 he filed a claim petition before the Labour Commissioner Dehradun. The conciliation proceeding was initiated in which the management participated. But the management refused to re-engage him and conciliation failed. Thus, appropriate government referred the matter for adjudication on the legality of the termination of service of the claimant.

Being noticed the management appeared and filed Written Statement denying the stand taken by the claimant. it has been specifically stated that the claimant was engaged as a cleaner on 01.01.2008 at the British Cemetery at Roorkee, Dehradun on monthly remuneration of 5500/-. Since the Archeological Survey of India is not an industry defined u/s 2J of the Id Act the dispute raised by the claimant is not an Industrial Dispute and the proceeding is not maintainable. It has further been stated that the claimant was engaged as a sweeper under a time bound project for maintenance of the monument. His appointment was co-terminous with the project on completion of the project his engagement came to an end. While denying the claim of the claimant that he had worked for 240 days in a calendar year and thereby acquiring the status of a temporary employee the management has stated that the claimant was a part time casual labour in the year 2008-2009. Thereafter he was engaged as a casual Beldar from time to time on daily wage basis under some projects. When the project of British Cemetery ended the claimant was offered to serve as a casual Beldar at Kalsi Monument, District Dehradun. But he refused to accept the same and demanded regularization of service. Thereby the management has denied the claim of illegal termination and maintainability of the proceeding. The claimant while replication denying the stand of the management.

On this rival pleading following issues were framed for adjudication.

ISSUES

1. Whether the management of Archeological Survey of India Dehradun is wrong in denying continuation of the claimant service. If so its effect?

2. If yes, then to what relief the workman is entitled to?

The claimant examined himself as WW1and stated exactly in the line of the claim statement. The claimant has also filed certain documents marked in a series of WW1/1 to WW1/6. These documents include the advocate notice sent by the claimant to the management and the reply from the management. The claimant has also filed a copy of the claim petition filed before the Labour Commissioner Dehradun and the reply filed by the management to the same before the Commissioner. Similarly the management examined the Superintending Archeologist as MW1who also proved some documents marked as MW1/1 to MW1/3. MW1/1 is a letter dated 03.12.2014 written by the Superintending Archeologist offering the claimant to join at a site at Kalsi Monument in the district of Dehradun. MW1/2 is the reply given by the claimant to the letter marked as exhibit MW1/1 wherein he has stated that the Government of India is taking step to regularize the service of temporary workers who have worked for 6 years continuously. Hence, he is entitled to be regularized against the post of sweeper and unwilling to join at Kalsi as a daily wager. MW1/3 is another letter dated 15.12.2014 wherein the claimant was intimated that the Superintending Archeologist is not authorized to regularize the service of daily wager and he is at liberty of joining at the Monument site of Kalsi as a daily wager.

At the outset of the argument the Ld. Counsel for the respondent submitted that the claimant is demanding absorption on account of acquiring temporary status by working 240 days in the preceding calendar year preceding to his alleged date of termination. The law is well settled that the burden of proving work for 240 days lies on the claimant and in this case the claimant has not discharge the said burden at all. He also submitted that when the management offered employment as a daily wager at a different site the refusal by him makes him ineligible for relief sought in this proceeding.

ISSUE No.1 &2

The Ld. A/R for the claimant submitted that the claimant had worked as a cleaner in the British Cemetery since 01.01.2008 and had completed 240 days in a calendar year preceding to his termination. But surprisingly no document has been placed on record to prove the same. The law is well settled on point that the burden lies on the claimant to prove that he had worked for 240 days in a calendar year preceding to his termination which can be done by proving the duty register wage/salary register etc. the basic issue in the present cases the status of the workman and whether he was an employee in temporary status of the management. While adducing evidence the claimant though stated about his continuous work since 01.01.2008 till the date of termination on 01.07.2014 not a single piece of paper has been filed to prove the same. No evidence has been adduced to prove that he was in the pay roll of casual employee of ASI. On such a situation the tribunal has no hesitation in accepting the contention of the management that the claimant was working under a project for maintenance of the monument and when the project ended, his engagement also ended. Hence, both the issues are decided against the claimant and it is held that the claimant has not succeeded in proving that he had worked for 240 days in a calendar year preceding to his alleged termination and thereby had acquired temporary status. Similarly it is held that when the evidence on record proves that on completion of the project under which the claimant was working the management had offered him re-engagement in a different site but the claimant refused to accept the same on the plea that he is entitled to regularization of service. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant and he is held not entitled to the relief sought for. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप सचिव (पंडित सुंदर लाल शर्मा), केंद्रीय व्यावसायिक शिक्षा संस्थान, भोपाल (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती ओमवती बाई, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/80/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.09.2021 को प्राप्त हुआ था।

[सं. एल-42012/28/2011-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 612.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/80/2011) of the Central Government Industrial Tribunal-cum-Labour Court-Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Deputy Secretary (Pandit Sundar Lal Sharma), Central Institute of Vocational Education, Bhopal (M.P.) and Smt. Omwati Bai, worker which was received along with soft copy of the award by the Central Government on 07.09.2021.

[No. L-42012/28/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/80/2011

Present: P. K. Srivastava, H.J.S..(Retd)

Smt. Omwati Bai
W/O Shri Shripal,
Resident House No.468,
Pampapur, Rahul Nagar,
MACT Road,
Bhopal (M.P.) ... Workman

Versus

The Deputy Secretary
(Pandit Sundar lal Sharma)
Central Institute of Vocational Education,
131, Zone-II, M.P.Nagar,
Bhopal (M.P.) ... Management

AWARD

(Passed on this 27th day of August-2021)

As per letter dated 8/9/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/28/2011-IR(DU). The dispute under reference relates to:

> "***Whether PPS Central Institute of Vocation Education is an Industry with the provisions of Industrial Disputes Act 1947? Whether the service of Smt. Omwati Bai is illegally terminated w.e.f. 1-6-2010 by an oral order? What relief the workman is entitled to?***"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in her statement of claim is that she appointed against the clear vacancy of peon in the year 1992 by Management as per recruitment procedure and worked continuously till the termination of her services by Management on 1-6-2010. This termination was under oral orders without following the procedure of law and no opportunity of hearing was given to her prior to termination of her services, inspite of the fact that she worked since 1992 to 2010 continuously and to the satisfaction of the Management. According to the workman, her termination was against law and requires to be set aside. Accordingly, it has been prayed that setting aside her termination, the workman be reinstated with all consequential benefits.

3. The case of Management is mainly that the workman was engaged by Management on contract basis for a limited period which was extended from time to time. She was disengaged after expiry of contract. It is also denied that she worked continuously for a period of 240 days prior to her date of dis-engagement. Accordingly the Management has prayed that the reference be answered against the workman.

4. The workman filed her affidavit. None from the Management was present to cross-examine her, hence closing the opportunity of Management to cross-examine the workman, the case has proceeded ex-parte against the Management.

5. At the time of arguments no one was present. Parties were given opportunity to file written arguments but no written arguments were filed by any of the parties. I have gone through the record as well.

6. The relevant provisions of Section 2(00), Section 25-B, Section 25-F and Section 25-G of the Industrial Disputes Act,1947 requires to be referred here and is reproduced as under:-

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

Section 25 B:-

Definition of continuous service.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

7. The workman has stated in her affidavit that letter was issued on 11-3-2002 for extension of her appointment and thereafter several letters were issued for extending her appointment from time to time, copies of which have been filed. I have gone through these letters. These letters show that she was initially appointed/engaged for a fixed term on contract basis. This term was extended several times, latest in the series is the letter dated 29-3-2007 whereby her service contract was extended for another three months on same terms and conditions as were in the previous service contract. Since the workman was engaged for a fixed term on contract basis, her dis-engagement is not covered and cannot be called as retrenchment as defined under Section 2(oo) of the Industrial Disputes Act,1947.

8. As regards, the second contention of the workman regarding continuous engagement for 240 days in the year preceding the year of her dis-engagement, there is on record photocopy of attendance sheet of august-2009, October-2009 and November-2009. Though it has not been proved by the workman but it goes to show that the requirement of continuous engagement of 240 days as mentioned above is not fulfilled by this document, hence only on the basis of a self-serving statement of the workman that she was in continuous engagement of Management for a period of 240 days in the year preceding the date of her dis-engagement cannot be held sufficient as to prove this fact.

9. On the basis of the above discussion, the reference is liable to be answered against the workman.

10. Accordingly, following award is passed:-

A. The action of the Management in terminating the services of workman Smt. Omwati Bai w.e.f. 1-6-2010 is held legal and justified.

B. The workman is not entitled to any relief.

C. No order as to costs.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्यपालक अभियंता, केंद्रीय लोक निर्माण विभाग, गाजियाबाद सेंट्रल सिविल डिवीजन, हिंडन, वायु सेना स्टेशन, (उत्तराखंड) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बलराम और 17 अन्य, सी/ओ अखिल भारतीय (एमआरएम) कर्मचारी संगठन, नई दिल्ली के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 34/2009) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल- 42011/05/2009-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 613.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2009) of the Central Government Industrial Tribunal-cum- Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Engineer, Central Public Works Department, Ghaziabad Central Civil Division, Hindon, Air force Station, (Uttarakhand) and Shri Balaram & 17 Others,c/o ALL INDIA (MRM) Karamchari Sangathan, New Delhi which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-42011/05/2009-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 34/2009

Date of Passing Award- 17th August,2021.

Between:

Shri Balram & 17 Others,
C/o All India CPWD (MRM) Karamchari Sangathan
H.NO. 4823, Gali No.13,
Balbir Nagar Ext., Shahdra,
New Delhi-112232. ...Workmen

Versus

The Executive Engineer,
CPWD, Ghaziabad Central Civil Division,
Hindon, Air force Station,
Uttarakhand-248001. ...Management

Appearances:-

Shri Satish Sharma (A/R) : For the Workman.

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CPWD, Ghaziabad Central Division and its workman/ claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/05/2009 (IR(DU) dated 09/04/2009 to this tribunal for adjudication to the following effect.

> "Whether the demand of All India CPWD (MRM) Karamchari Sangathan for grant of pay scale of Rs. 950-1500 to Shri Balram and 17 others as per annexure, w.e.f 01/04/91 is legal and justified? If yes, to what relief the workmen are entitled to?"

Being notice the claimants as well as the management CPWD appeared and filed their respective pleading.

It has been stated by the claimant that they had joined the service of CPWD as Beldars on different dates as mentioned against their names in the list appended to the claim statement. Their initial appointment was in the unskilled category. Since the workmen had reached at the maximum of their respective pay scale meant for unskilled workers before 01.04.1991, they were allowed in-situ promotion w.e.f. 01.04.1991 by the order of the government dated 03.12.1991 and allowed the promotional pay scale of 800-1150/- which was at par with the pay scale of Assistant Categories in CPWD. During in in-situ promotion the workmen not only drew higher pay scale but also granted arrear of differential pay from 01.04.1991 till the date of actual drawal.

An arbitration award was passed in the year 1988 and pursuant thereto the DGW, CPWD by its order dated 07.05.1997 merged the assistant category with the corresponding main category w.e.f 01.01.1973 and renamed the same as skilled category. Accordingly the workmen of this proceeding who were drawing the pay scale of Assistant Category on account of their in-situ promotion became entitle to the scale of skilled category i.e. 950-1500/-. Accordingly their pay fixation was revised and arrears were paid w.e.f 01.04.1991. During this intervening period the report of the 4th pay commission became enforceable. The DGW, CPWD having considered the fact that some of the workmen have been left out from in-situ promotion and getting lower pay scale for some administrative reason, directed by order dated 01.08.2007 that the in-situ promotion being given to them which will be applicable upto 09.08.1999 when the ACP will be applicable. Accordingly the claimants are entitled to the in-situ promotion w.e.f 01.04.1991 in the pay scale of 950-1500 and the ACP as is admissible. The order of DGW, CPWD was clear to the extent that for grant of in-situ promotion no skill test as a pre condition is necessary. Thus, the claimants have stated that the action of the management is prejudicial towards them and have prayed for an award to be passed directing the management to provide them in-situ promotion pay scale meant for the skilled workers w.e.f 01.04.1991 with all consequential benefits. The claimants have

further stated that they had raised a demand before the management through the Union but the management did not pay any heed. Thus, a dispute was raised before the Labour Commissioner where steps were taken for conciliation. Since the conciliation failed the appropriate government referred the matter for adjudication.

The management appeared and filed written statement denying the stand taken by the workmen. The contention raised by the management is that this proceeding is not maintainable since there exists no Industrial dispute between the parties. The further contention of the management is that the claimants were initial appointed as Beldars in the pay scale of 180-290. At the time of initial appointment they were unskilled workers and later on confirmed in the post of Beldar and were allowed revision of the pay scale as and when applicable and decided by the government. It has also been stated that the claimants had attained the maximum pay scale in the cadre of unskilled workers/Beldars i.e. 750-940 in the year 1991. On 14.03.1996 they were given in-situ promotion w.e.f 01.04.1991 in the pay scale of 800-1150/-. Later the department issued a clarification that the in-situ promotion would be applicable upto 08.09.1999 i.e. till the date of introduction of ACP. To get the ACP the candidate has to qualify in the Trade Test. Since, the workmen could not qualify the Trade Test they were not given the ACP. Hence, the claim of the workmen is not tenable.

The claimants filed rejoinder challenging the stand taken by the management on the point of maintainability and their entitlement to in-situ promotion.

On the rival pleading the tribunal passed the order that no other issue need to be framed except the issues referred under the terms of reference.

The claimants examined himself as WW1 to WW9. They also filed documents marked in a series of WW1/1 to WW1/4. The management examined one of its Executive Engineer S.C Sharma as MW1 who also proved several documents marked in a series of MW1/1to MW1/2.

FINDINGS

The admitted facts are that the claimants were initially appointed as Beldars and it is not disputed that they were granted in-situ promotion w.e.f 01.04.1991 in the pay scale of 800-1150/- meant for Assistant or Semi skilled category. The actual order was passed on 14.03.1996. It is also not disputed that the said in-situ promotion was allowed upto the time just before introduction of ACP on 19.08.1999. The other admitted fact is that the workmen had reached the maximum pay scale of unskilled category i.e. 750-950/-. By filling the order of CPWD dated 07.05.1997 marked as exhibit WW1/1 the workman have stated that the government took a decision for merging assistant categories of work charged employees of CPWD with the corresponding main category and reclassifying them as skilled workmen. Thus, after such merger all the promotions applicable to the skilled workman automatically became applicable to the semi skilled persons reclassified as skilled workman. The said order since directed that after the merger the pay scale of each worker in pre-revised scale will be fixed on 01.01.73 or on the date of merger whichever is later and again on 01.01.86 in the new scale as per the fourth pay commission, Accordingly the pay scale of claimants was revised. There was no anomaly in the said pay fixation but the management acted arbitrarily in withdrawing the in-situ promotional pay scale allowed to them.

The other contention raised by the workmen is that on account of the in-situ promotion given in the unskilled category, they were never promoted to the next higher rank and the ACP was correctly allowed to them. To support the stand reliance has been placed in the case of Union of India vs. Rajpal and others decided by the Hon'ble High Court of Punjab and Haryana in CWP No. 19387 of 2011. It is also contended by the workmen that the said judgment of the Hon'ble High Court was followed by the Hon'ble CAT Principal Bench Delhi and upheld by the Hon'ble Supreme Court in SLP NO. 7467 of 2013.

The witness examined on behalf of the management while admitted about the circular of the DOPT regarding the grant of ACP stated that the department had issued an order for grant of the pay scale of 850-1150/- to unskilled workers w.e.f 01.04.1991. There is no dispute that the cadre of semi skilled workers merged with the skilled workers w.e.f 01.01.73 as per the arbitration award of 1988. This was the award passed prior to the order of the DOPT dated 13.9.1991 directing grant of in-situ promotion w.e.f. 01.01.73. Thus, the department found that the order of the management for grant of in-situ promotion to these workmen and others in the scale of 850-1150/- was not proper and hence, passed order for withdrawal of the same and recovery of the amount already paid. The witness of the management during cross –examination had admitted that before grant of ACP another order vide exhibit WW1/2 dated 23.08.2005 was passed giving clear direction that pay protection will be allowed to the persons from whom in-situ promotion benefits shall be withdrawn and ACP will be granted. Not only that the witness who is an Executive Engineer during cross-examination failed to say if the financial benefit granted to the workmen for the said in-situ promotion and for the recovery made has impacted their entitlements for the period 1999-2008 though the ACP came into force w.e.f 09.08.1999. Thus, from the oral evidence of the management witness coupled with the document marked as WW1/3 and MW1/1 it is evidently clear that by order of the DOPT dated 13.09.1991 the Assistant Category merged with the skilled category. Before that the claimants were granted in-situ promotion in the cadre of Beldars raising their pay to

850-1150/-. After the merger as stated above they were entitled to in-situ promotion in the cadre of skilled workers. During this intervening period ACP came to force w.e.f 09.08.1999. The claimants were entitled to in-situ promotion w.e.f 01.04.1991 in the cadre of skilled workers and their ACP should have been accordingly determined. Thus, it is held that the decision of the management in withdrawing the in-situ promotional scale, recovering the amount paid and revising the ACP granted to them is illegal. This issue is accordingly answered.

In view of the above said finding it is held that the workmen are entitled to the promotional scale of 950-1500/- w.e.f 01.04.1991 under in-situ promotion in skilled category and the same shall be taken into consideration for re-fixation of their first ACP as a consequence thereof. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the workmen. It is directed that the management shall re-fix the salary of the workmen in the pay scale of 950-1500 w.e.f 01.04.1991 in, in-situ promotion. IN view of this direction the ACP to be allowed to the workmen shall be revised accordingly. The pay on such fixation and the differential arrear shall be paid to the workmen by the management within 3 months from the date when this award would become enforceable failing which the amount accrued shall carry interest @12% per annum from the date when the amount is payable and till the final payment is made and the claimants would be at liberty of getting the order executed through process of law. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Sl. No.	Name	Fathers Name	Designation	Date of Appointment
1.	Bal Ram	Chunni lal	Beldar	04.02.67
2.	Hira Lal	Saktu singh	Beldar	30.06.66
3.	Amar Singh	Balku	Beldar	08.05.67
4.	Daya Chand	Himat Singh	Beldar	04.05.67
5.	Prakash	Mool Chand	Beldar	30.06.66
6.	Mani Ram	Mange Ram	Beldar	3.5.67
7.	Ashe	Ram Swarup	Beldar	3.1.73
8.	Ram Prasad	Ram Ashre	Beldar	11.05.67
9.	Rajman	Kedar	Beldar	03.05.67
10.	Sube Singh	Bina Lal	Beldar	15.01.68
11.	Surji	Gyasa	Beldar	03.05.67
12.	Dalchand	Shiv lal	Beldar	30.06.66
13.	Bhopal	Horam	Beldar	06.02.67
14.	Tek Chand	Kalu	Beldar	28.07.67
15.	Ramanad	Baldeva	Beldar	20.06.67
16.	Hardut	Karan Singh	Beldar	22.02.70
17.	Lekh Raj	S/o Kishan Sahai	Beldar	02.05.67
18.	Kishandei	W/o Kishan Sahai	Beldar	08.01.73

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्यपालक अभियंता, केंद्रीय लोक निर्माण विभाग, देहरादून केंद्रीय सिविल डिवीजन-I, देहरादून, (उत्तराखंड) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री चंद्र भान एवं अन्य, सी/ओ अखिल भारतीय केंद्रीय लोक निर्माण विभाग (एमआरएम) कर्मचारी संगठन, नई दिल्ली के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 30/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल- 42011/01/2015-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 614.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2015) of the Central Government Industrial Tribunal-cum- Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Engineer, Central Public Works Department, Dehradun Central Civil Division-I, Dehradun, (Uttarakhand) and Shri Chander Bhan & Others, Beldar, C/o All India CPWD (MRM) Karamchari Sangathan, New Delhi which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L- 42011/01/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 30/2015

Date of Passing Award- 17th August, 2021

Between:

Shri Chander Bhan & Others, Beldar,
C/o All India CPWD (MRM) Karamchari Sangathan
H.NO. 4823, Gali No.13,
Balbir Nagar Ext., Shahdra,
New Delhi-112232. ... Workmen

Versus

The Executive Engineer,
CPWD, Dehradun Central Civil Division-I,
Subhash Road, Dehradun,
Uttarakhand-248001. ... Management

Appearances:-

Shri Satish Sharma (A/R) : For the Workman

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CPWD, Dehradun Central Civil Electrical Division-I and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/01/2015 (IR(DU) dated 17/02/20152018 to this tribunal for adjudication to the following effect.

> "Whether the workmen are entitled for grant of promotion w.e.f. Feb 1995, while the mistake in their promotion is already admitted and specific order to that effect is required? And if so, whether their services should be regularized and what should be the shortest specific time period for issuance of such immediate order and payment of accrued benefit there upon that he is entitled to?"

Being noticed the claimants as well as the management, CPWD appeared and filed their respective pleadings.

As per the narratives in the claim statement, the claimants had joined the service of CPWD as Beldars on different dates as mentioned against their names in the list appended to the claim statement .their initial appointment was in the unskilled category. Since the workmen reached the maximum of the pay scale in that unskilled category, the management w.e.f, 1.4.91, gave them in situ promotion raising their pay scale 800-1150/- which was the semi skilled or assistant category of workers. But the CPWD, pursuant to the circular of DOPT, merged the semiskilled category with the main category w.e.f 01.01.73 and re designated the same as skilled artisan. As a result there of, the claimants were granted the higher pay scale of skilled artisan w.e.f

01.01.73 and paid arrear of the said scale too. Being in the pay scale of skilled artisan since 01.01.73, they were entitled to the in-situ promotion in that cadre and higher pay scale under ACP Scheme w.e.f 9.8.99 as directed in the office memorandum dated 8.8.2006 issued by DGW,CPWD.(ANNEXTURE IV). But the management instead of granting ACP, after giving the claimants in-situ promotion in the category of skilled artisan, on 23.8.2005 withdrew the in situ promotion granted to them w.e.f.1.4.91, raising their pay to Rs. 800—1150/- .This order dated 23.8.2005 (Annexure III) was issued illegally and arbitrarily without giving any prior intimation to the claimants. Though in the letter dated 23.8.2005, there was a clear direction for granting pay protection to the beneficiaries there under, the management not only with drew the in situ promotion granted w.e.f.1.4.91, but also recovered the financial benefits granted to the claimants while granting ACP to them w.e.f 9.8.99.

Being aggrieved the claimants raised a demand before the management through the union. But the dispute could not be resolved and the Union raised dispute before the Labour commissioner. Attempt was made for conciliation. That too failed and the appropriate Government referred the matter for adjudication in terms of the reference. It has also been stated that all the claimants have retired from service and few of them also died during the pendency of the proceeding and their legal heirs have been substituted. The illegal decision of the management has substantially influenced the retirement dues of the claimants. Hence in this proceeding they have prayed for adirection to the Management to grant pay scale of Rs 950-1500 w.e.f 1.4.91 and consequentially for revision in ACP, already granted to them. A prayer has also been made for a direction to the management for revision of their terminal benefits and refund of the recovered amount within a stipulated time period.

The Management filed written statement refutting the stand taken by the claimants. While challenging the maintainability of the proceeding, it has been stated that there exists no Industrial Dispute between the parties. While denying the stand of the claimants that assistant or semi skilled category was abolished w.e.f. 7.5.97, the management has stated that the assistant or semiskilled category merged with the skilled category w.e.f. 7.5.97 and renamed as skilled artisans. The claimants were working as beldar and never promoted to semiskilled category prior to 7.5.97. In view of the DG, CPWD, Office memorandum No 28/06/1997-EC dated 18.11.97. The unskilled workers of CPWD are to be granted in situ promotion with pay scale of Rs800-1150. Hence the order dated 7.5.97 is not applicable to the claimants of this proceeding. The claimants were granted ACP according to their eligibility and at that time pay protection was allowed to them. With such stand the Respondent has pleaded that the claimants are not entitled to the relief sought for.

The claimant filed replication to the stand taken by the Respondent.

On these rival pleadings the following issues were framed for adjudication.

ISSUES

1. Whether the workmen are entitled for grant of promotion w.e.f. Feb 1995, when the mistake in promotion is already admitted and specific order to that effect is required? If so it's effect?
2. And if so, what should be the shortest specific time period for issuance of such immediate order and payment of accrued benefit thereupon
3. To what relief the workmen are entitled to and from which date and direction to management if any.

During the course of hearing the claimants examined these the claimants have Ives as ww1 to ww3 and proved the documents marked in aseries of ww1/1 to ww1/5. On behalf of the management one of it's Executive Engineer testified as MW 1 and proved the documents marked as Ext MW 1/1 to MW 1/4. The documents filed and relied upon by the claimants are the office memorandum of DG CPWD dated 07.05.97 on the basis of which the cadre of Assistant or semi skilled had merged with the skill category, the office order regarding a revision of pay scale granted to beldars (unskilled category) on their in-situ promotion in CPWD, the subsequent letters of the management withdrawing the in-situ promotion already granted for grant and implementation of ACP. The claimants have also filed the order of the management wherein guidelines were issue for grant of ACP to the persons to whom in-situ promotion was due prior to 09.08.1999 but could not be allowed due to administrative reason and the benefit of in-situ promotion can be allowed but upto 08.08.1999. Similarly the management besides examined its Executive Engineer also proved the documents which are the office memorandum dated 08.08.2006 containing guidelines for grant of in-situ promotion viza-viz ACP, the order of the management in which the in-situ promotion granted by order dated 10.02.2003 was withdrawn and the money paid would be recovered though a pay protection was granted for fixation of the pay on giving the benefit of ACP. The management witness has also proved the order of the management dated 23.08.2005 in which in-situ promotion was originally granted.

FINDINGS

ISSUE NO.1

Admitted facts are that the claimants were initially appointed as Beldars and it is not disputed that they were granted in-situ promotion w.e.f. 01.04.1991 in the pay scale of 800-1150/- and the actual order was passed on 14.03.1996. It is also not disputed that the in-situ promotion was allowed upto the time just before introduction of ACP on 09.08.1999. The other admitted facts is that the workman had reached the maximum scale of unskilled category i.e. 750-950/-. By filling the order of CPWD dated 07.05.1997 marked as exhibit WW1/1 the workman have stated that the government took a decision for merging assistant categories of work charged employees of CPWD with the corresponding main category and reclassifying them as skilled workman. Thus, after such merger all the promotions applicable to the skilled workman automatically became applicable to the semi skilled persons reclassified as skilled workman. The said order since directed that after the merger the pay scale of each worker in pre-revised scale will be fixed on 01.01.73 or on the date of merger whichever is later and again on 01.01.86 in the new scale as per the fourth pay commission, accordingly the pay scale of claimant was revised. There was no anomaly in the said pay fixation but the management acted arbitrarily in withdrawing the in-situ promotional pay scale allowed to them.

The other contention raised by the workmen is that on account of in-situ promotion they were never promoted to the next higher rank and the ACP was correctly allowed to them. To support the stand they have relied upon the judgment passed by the **Hon'ble High Court of Punjab and Haryana in the case of Union of India and others vs. Raj Pal and others decided in CWP No. 19387 of 2011.** It is also the contention of the workmen that the said judgment of the Hon'ble High Court was followed by the Hon'ble CAT Principal Bench Delhi and upheld by the Hon'ble Supreme Court in SLP NO. 7467 of 2013.

The witness examined on behalf of the management while admitted about the circular of the DOPT regarding the grant of ACP stated that the department had issued an order for grant of the pay scale of 850-1150/- to unskilled workers w.e.f 01.04.1991. There is no dispute that the cadre of semi skilled workers merged with the skilled workers w.e.f 01.01.73 as per the arbitration award of 1988. This was the award passed prior to the order of the DOPT dated 13.9.1991 directing grant of in-situ promotion w.e.f. 01.01.73. Thus, the department found that the order of the management for grant of in-situ promotion to these workmen and others in the scale of 850-1150/- was not proper and hence, passed order for withdrawal of the same and recovery of the amount already paid. The witness of the management during cross –examination had admitted that before grant of ACP another order vide exhibit WW1/2 dated 23.08.2005 was passed giving clear direction that pay protection will be allowed to the persons from whom in-situ promotion benefits shall be withdrawn and ACP will be granted. Not only that the witness who is an Executive Engineer during cross-examination failed to say if the financial benefit granted to the workmen for the said in-situ promotion and for the recovery made has impacted their entitlements for the period 1999-2008 though the ACP came into force w.e.f 09.08.1999. Thus, from the oral evidence of the management witness coupled with the document marked as WW1/3 and MW1/1 it is evidently clear that by order of the DOPT dated 13.09.1991 the Assistant Category merged with the skilled category. Before that the claimants were granted in-situ promotion in the cadre of Beldars raising their pay to 850-1150/-. After the merger stated above they were entitled to in-situ promotion in the cadre of skilled workers. During this intervening period ACP came to force w.e.f 09.08.1999. The claimants were entitled to in-situ promotion w.e.f01.04.1991 in the cadre of skilled workers and their ACP should have been accordingly determined. Thus, it is held that the decision of the management in withdrawing the in-situ promotional scale, recovering the amount paid and revising the ACP granted to them is illegal. This issue is accordingly answered.

ISSUE NO.2 and 3

In view of the finding arrived while deciding the issue no.1 it is held that the workmen are entitled to the promotional scale of 950-1500/- w.e.f 01.04.1991 under in-situ promotion in skilled category and the same shall be taken into consideration for re-fixation of their first ACP as consequence thereof. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the workmen. It is directed that the management shall re-fix the salary of the workmen in the pay scale of 950-1500/- w.e.f 01.04.1991 in, in-situ promotion. In view of this direction the ACP to be allowed to the workmen shall be accordingly revised. The pay on such fixation and the differential arrear alongwith the amount recovered shall be paid to the workmen by the management within 3 months from the date when this award would become enforceable failing which the amount accrued shall carry interest @12% per annum from the date when the amount is payable and till the final payment is made and the claimants would be at liberty of getting the order executed through process of law. Since, some of the claimants have died during the pendency of this proceeding, the amount shall be paid to the legal heirs of the said claimant as per the list appended to this order. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Sl. No.	Name	Father's Name	Designation	Date of Appointment/ Promotion	Date of Retirement
1.	Late Chander Bhan (Legal Heir) Mrs. Sheela	Bhoop Singh	Beldar/Mason	21.07.66 /27.09.03	28.02.06
2.	Ashe	Khachedu	Beldar/fitter	30.06.66 /27.09.03	30.06.06
3	Jai Karan	Ram Chander	Beldar	06.05.67	31.10.06
4	Late Rumal Singh (Legal Heir) Mrs. Nattho	Pushan	Beldar	06.05.67	30.04.07
5	Late Shri Tilak Ram (Legal Heirs) Mrs. Chandrawati	Jagram	Beldar	04.05.67	28.02.05
6	Bhup singh	Dal Singh	Beldar	20.07.66	31.07.05

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडेंट और मुख्य प्रशिक्षक, भारतीय सैन्य अकादमी, देहरादून - (उत्तराखंड) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विशाल बहुगुणा, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 16/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-14012/11/2012-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 615.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2013) of the Central Government Industrial Tribunal-cum-Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commandant and Chief Trainer, Indian Military Academy, Dehradun- (Uttarakhand) and Shri Vishal Bahuguna, worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-14012/11/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 16/2013

Date of Passing Award- 16th August, 2021

Between:

Shri Vishal Bahuguna
S/o Shri Kailash Bahuguna,
Kotda Santur, P.O. : Chandrabani,
Dehradun. ... Workman

Versus

The Commandant and Chief Trainer,
Indian Military Academy.
Dehradun ... Management

Appearances:-

Shri Mukesh Kumar (A/R) : For the Workman.

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Indian Military Academy and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/11/2012 (IR (DU) dated 25.02.2013 to this tribunal for adjudication to the following effect:

> "Whether the action of the management of Indian Military Academy, Dehradun in terminating the services of Shri Vishal Bahuguna, casual labour without complying with Section 25 F, G, H of the Industrial Dispute Act, 1947 is justified? If not, what relief he is entitled to ?"

As per the claim statement the claimant was working for the management as a casual labour (Mali / Groom) in the Indian Military Academy Dehradun from 1st April 2000 till the termination of his service in the year 2011. During these 11 years he was working regularly to the satisfaction of the employer and getting remuneration from them. The employer had never expressed dissatisfaction on the work of the claimant. On the contrary the employer had issued the experience certificate. While the matter stood thus, the employer IMA issued advertisement to fill up the vacancies in different posts by making permanent appointment in group –C cadre. 11 vacancies for the post of (Mali / Groom) were advertised and the claimant being eligible for the same had submitted application of his candidature. He was allowed to appear in the written examination and roll no. 8743 was allotted to him. The claimant successfully qualified in the written examination and his name was included in the list of successful candidates. Being called upon, he appeared in the interview and the skill test.

Though he had performed very well in the interview and the member taking interview assured him that persons having experience shall be given preference over the inexperienced persons, a list was published in respect to the successful candidates. To his utter dismay his name was not in the list of successful candidates. Not only that he found persons having less qualification and less experience than him were declared successful. Being aggrieved he submitted an application under RTI to ascertain the procedure adopted for the selection since he suspected foul play in the process of selection. The information sought was not supplied. On the contrary the service of the claimant was terminated w.e.f 1.03.2011 in violation of the provisions of section 25-F, 25-G and 25-H, of the Id. Act. The claimant has further stated that during the period of his employment he had completed 240 days of work in a calendar year and thereby acquired temporary status. But the management instead of regularizing the service against the vacant post appointed less qualified and less experienced persons as a result of which he became victim of unfair labour practice. Thereby the claimant had prayed for a direction to the management to regularized his service against the permanent post and to reinstate him in the post of (Mali/ Groom)with back wages and all other benefits as would deem fit.

The management filed written statement challenging the maintainability of the proceeding . It is the specific stand of the management that IMA is not an industry nor carrying out any activity which can be considered as a trade or business nor involved in any other activity related to production distribution or supply

of goods or services meant for satisfying human wants. The management added that the Ministry of Labour and employment in their letter dated 10.07.2012 have clearly opined that the category –A training establishment under the DGMT at IMA Dehradun is not covered u/s 2 (j) of the Industrial Dispute Act 1947. As such this Tribunal lacks the jurisdiction to adjudicate the matter.

With regard to the claim of the claimant it has been stated that the entire claim is based upon a misconception of fact and the Ministry of Labour and employment in a stereotype manner made the reference for adjudication. While denying the claim that the claimant was working as a (Mali / Groom)in IMA since 11 years it has been stated that the claimant was working as a Casual labour on daily wage basis in IMA as and when required and getting the wage in accordance to the work done by him. While denying the certificates granted to the claimant and placed on record of this proceeding as authenticated documents of employment, the management had stated that the senior army officers might have issued those certificates in their personal capacity to help the claimant for his employment in other establishment. The said experience certificate cannot confer any right on the claimant for his absorption against a permanent post of IMA. While rejecting the stand of the claimant that a gate pass was issued to him as an employee, the management has stated that the premises of IMA being a prohibited area gate passes are issued to the persons entering into the premises for any kind of work. Issue of gate pass never confers any right to any person for employment. The management has admitted that advertisement was made to fill up the permanent post in group C including the post of (Mali / Groom). It has also been admitted that the claimant had appeared in the examination, qualified in the written test and appeared for the skill test. But it has been disputed that the claimant had performed well and got assurance from the selection board for his engagement. The management had specifically denied about the claim of the workman for working 240 days in a calendar year and there by acquiring temporary status. The management has further pleaded that the claimant is trying to make a back door entry into the service of IMA which stands opposed to the policy of public employment. Citing the judgment of the Hon'ble Supreme Court rendered in the case of **Secretary State of Karnataka Vs. Uma Devi**, the management has pleaded that the claim of the claimant is devoid of merit and liable to be rejected. The claimant filed reapplication denying the stand of the management.

On the rival pleadings of the parties the following issues have been framed for adjudication:

ISSUES

1. Whether the action of the management of IMA of Dehradun, in terminating the service of Vishal Bahuguna (Mali / Groom) w.e.f 1.3.2011 is unjustified? If so, what effect?
2. Whether the management / respondent is covered under 2 (j) of the ID. Act 1947? If so its effect?
3. Whether the workman refused to work offered by the respondent?
4. To what relief the workman is entitled to and from which date?

The claimant examined himself as WW1 and filed few documents marked in a series of WW1 to WW1/5, these document includes the gate pass issued to the claimant, the list of successful candidate in the written test for (Mali / Groom) the list of successful candidate after the interview and skill test, photocopies of the attendance register for the year 2010 and part of 2011 i.e till the date of alleged termination. The claimant has also filed photocopies of his academic qualification and photocopies of newspaper clippings with regard to the allegation of malpractice and corruption in selection by the officials of IMA and investigation by CBI on the same. Similarly the management examined its establishment officer as MW1. He proved certain document marked as a series MW1/1 (Colly). The document filed by the management are the letter correspondence between IMA and Ministry of Labour and employment, wherein the Ministry said that IMA is not an industry and does not fall under the definition of section 2 (j) of the Id. Act, 1947.

At the outset of the argument Ld. A/R for the claimant submitted that the management very well falls under the definition of industry and the proceeding is maintainable. He also submitted that any letter correspondence made between the Ministry of Labour and Employment and IMA cannot supersede the judgment pronounced by the Hon'ble High court and the definition given under the statute . He also argued that when the claimant and some other persons standing in the same category were working as a casual workers for a pretty long period, the management instead of regularizing their service made advertisement to fill up those post is illegal and amounts to unfair labour practice. The Ld. A/R for the claimant also argued that the claimant though as a matter of principle should have been regularized against the permanent post considering his long service as a casual employee, he as an abundant caution had submitted application in response to the advertisement and despite performing well in the written and skill test he was not selected as malpractice was adopted in the process of selection.

The Ld. A/R for the management in reply argued that the Ministry in a mechanical manner forwarded the reference which stands against its own decision that the IMA is not an industry and any dispute between the management and its employees is not industrial dispute. Placing reliance in the case of Uma Devi referred supra

he submitted that the claimant is trying to make a back door entry which is opposed to the policy of equal opportunity in public employment as mandated by the constitution.

FINDING

Issue No. 2.

This is a reference received from the Ministry of Labour and employment for adjudication of the dispute between the employee and the employer. In its pleading the management had raised objection on the maintainability of the proceeding solely on the ground that IMA is not an industry as defined under section 2(j) of the ID. Act 1947. To support the stand taken the management had filed some letter correspondence between the Ministry of Defence (Army) IMA and the Ministry of Labour and employment filed as MW1/1 (colly) . On the basis of these documents the Ld. A/R for the management argued that Ministry of Labour has stated in clear terms that IMA, which provides training to its commissioned officers, is not an industry and the reference is liable to be rejected for want of jurisdiction. The 1st schedule of the Industrial dispute Act, 1947 under serial no. 8 clearly states that the defence establishment is an industry of public utility services under sub clause (VI) of clause (N) of section 2 of the Act. Not only that on behalf of the claimant reliance has been placed in the case of Union of India Vs. CGIT and others reported in 1986 LAB.I.C 1269 in which the Hon'ble High Court of Calcutta have held that as per the Government orders of 1962 and 1972 Engineers store depot of defence establishment is a department of defence but the employees working under that establishment not being the subject to Army Act are civilians and workman under the Industrial dispute Act. In this case the persons working for different casual work in the IMA not being the subject under the Army Act and being civilians very well fall under the category of workman under the Industrial Dispute Act and the establishment falls within the definition of industry. Any correspondence between the IMA and Ministry of Labour cannot take away the right of the claimant as a workman employed in any industry to do any manual or technical work since the letter correspondence between the department cannot defeat a right of the claimant guaranteed under the statute. The proceeding is thus held maintainable and the issue is accordingly decided against the management.

ISSUE NO. 1 &3.

The claimant has ventilated two grievances in his claim petition. Firstly he had worked for the management for 11 years since 2000 to 2011. Though by working for more than 240 days in a calendar year he had acquired the status of a temporary employee, the management did not regularized his service against the vacant permanent post. On the contrary the management made advertisement for the said post, conducted written and skill test and by adopting unfair means rejected the candidature of the claimant and gave appointment to the persons having less qualification and less experience. It has further been stated by the claimant that his service was illegally terminated and at the time of termination no notice, notice pay or termination compensation was paid to him. Thereby he had prayed for regularization of service and reinstatement into the service with full back wages. To support his stand he has filed photocopy of the gate pass, attendance register for the intervening period and certificates of education and experience exhibited during the hearing.

The management on the contrary by examining its establishment officer as MW1 has adduced evidence to the effect that the claim of the claimant is baseless and based upon misconception of facts. The witness examined by the management has admitted that the claimant was working in the premises of the management but not as the (Mali / Groom) but as the need based casual labour in IMA. He was being called for work as and when required and paid wage proportionate to his work. The witness for the management has also admitted in his examination that written and skill test for the post of (Mali / Groom) was conducted pursuant to the advertisement. For the purpose a committee was formed and the said committee conducted the skill test and listed out the successful candidates. This claimant could not qualify the skill test and has now come up with a false plea to challenge the selection process which is not an industrial dispute. While disputing the experience certificate and gate pass filed by the claimant the witness spoke in clear terms that the claimant had never worked for 240 days in a calendar year nor acquired temporary status to advance a claim for absorption.

Be it stated here that the claimant during the proceeding had filed an application u/s 11 (3) of the ID. Act for a direction to the management for production of document relating to his attendance register and payment of wage register but the management in its reply by filing some pages of the attendance sheet denied possession of the document relating to wage paid to the claimant and experience certificate issued. Thus the claimant had filed the photocopies of the document as secondary evidence which were taken on record.

It is always on the claimant to prove that he was under the employment of the management and also completed 240 days of work in a calendar year. To discharge the said burden the claimant has relied upon the attendance register filed by himself as well as by the management. The management had admitted that the claimant was working in the premises of IMA from 2000 to 2011 and not as a (Mali / Groom) but as a casual labour. It is the further stand of the management that he had never worked for 240 days in a calendar year.

There is no dispute about the proposition of law that onus to prove that the claimant was in the employment of the management is always on the claimant and it is for him to adduce evidence to prove the same. Such evidence may be in form of receipt of salary or wage for 240 days or record of his engagement for that year to show that he had worked with the employer for more than 240 days or more in a calendar year. In this regard reliance can be placed in the case of **Batla Co-operative Sugar Mills Ltd. Vs. Sowaran Singh (2005) 8 SCC 481 and in the case of Director of Fisheries, terminated division Vs. Bhikubhai Meghajibhai Gavda (2012)1 SCC 47**. On considering the oral and documentary evidence adduced by both the parties it is found that the claimant had worked for the management in the year 2010 and part of 2011 and his signature in the attendance register alongwith other similar employees were being taken regularly . The photocopies of the attendance register filed by the management clearly shows that the same continuous register was being maintain for permanent (Mali / Groom) and casual labour (Mali / Groom) indicating their status separately and for each month the name of the claimant had appeared under the category of casual (Mali / Groom). This document of the management falsifies the stand of the management that the claimant was working as a casual labour on need basis. The management in this case is also guilty of suppressing material document like wage payment register which could have thrown light on the point of dispute.

The other stand taken by the management is that the claimant since never was an employee of IMA the question of terminating his service or complying with the provision of law laid u/s 25F , 25G and 25 H doesnot arise. But the oral and documentary evidence adduced by the claimant and discussed in the preceding paragraph and in absence of evidence to the contrary clearly proves that the claimant was under the employment of the management for long 11 years and had completed 240 days of work in a calendar year.

Now it is to be seem if the claimant was subjected to unfair labour practice or not "**Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID. Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair labour practice. In this case the document filed by the workman as well as the management clearly proves that the claimant was made to work as a casual labour(Mali / Groom) for long 11 years and had completed 240 days of work in the preceding year of his termination which had conferred the status of temporary employee before his termination. But the management in utter disregard of law deprived him from being regularized and even did not consider his status and experience when he had participated in the selection process to fill up the permanent vacancy in the post of casual labour (Mali / Groom).

On behalf of the management strenuous arguments was advanced relying upon the judgment of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006) 4 SCC page 1** to say that the claimant if would be absorbed against the permanent vacancy the same would amount to a back door entry and oppose the policy of equal opportunity in public employment. It is true that in the case of Uma Devi refer supra the Hon'ble Supreme Court have held that the persons who was appointed on temporary of casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But the case of the claimant to this proceeding is not a case of claiming automatic regularization or absorption. He had appeared in the written test and qualified for the skill test. But his candidature was rejected without letting him know the reason of rejection and how the other candidates were preferred over him. This itself amounts to unfair labour practice. **Unfair labour practice** as defined u/s 2(ra) means any practice specified in the 5th Schedule of the ID.Act. Under the said 5th Schedule to employ the workman as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workman amounts to unfair labour practice as has been done in the case of this claimant.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus, after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present

case where the workmen has been subjected to Unfair Labour Practice being engaged for work on temporary basis for a prolonged period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

> "Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves the continuous service of the workman for the management on temporary basis since the year 2000 to 2011, the decision of the management in not allowing him for regularization of his service when there was vacancy in the permanent cadre of casual labour (Mali / Groom) is held to be illegal and unjustified.

The witnesses examined by both the parties and the documents placed by them on record clearly proves that the claimant was subjected to unfair labour practice for the denial to absorb him against regular vacancy. The management has taken a plea that he was asked to continue as casual worker but he refused to do so. This itself shows how the claimant was unfairly treated by the management. These two issues are accordingly decided in favour of the claimant.

ISSUE NO. 4.

Here is a case where as indicated above the workman has been victimized on account of unfair labour practice. Though under the scope of the reference this Tribunal is to adjudicate on the legality and justifiability of the termination of service of the claimant, the industrial adjudicator under the industrial dispute act enjoys wide power for granting relief which would be proper under a given circumstance. In the case of **Hari Nandan Prasad and another Vs. Employer I/R to Management of FCI, reported in (2014) 7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon the Industrial Tribunal and labour court by the Industrial Dispute Act is wide. The Act, deals with industrial dispute, provides for conciliation, adjudication, settlement and regulates the right of the parties and enforcement of the awards and settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible under common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confine to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

In this case the management has not discharged his burden of proving the gainful employment of the claimant during the intervening period between the termination and adjudication. On the contrary the management had admitted through its witness that the provision of section 25 F, 25G and 25H were not followed at the time of termination since he was not their employee. Keeping the situation in view it is felt proper to issue a direction to the management to regularize the service of the claimant within 3 months in the post of casual labour (Mali / Groom).

Considering the fact that the claimant has not been gainfully employed during the intervening period it is directed that he shall get 40% of the back wage since the date of termination and till his service is regularized. This issue is accordingly answered. Hence allowed.

ORDER

The reference be and the same is answered in favour of the workman. It is held that the action of the management in not regularizing the service of the claimant who had participated in the selection process for permanent (Mali / Groom) is illegal, unjustified and amounts to unfair labour practice since the workman had worked in the management for a pretty long period as casual worker. The management is hereby directed to regularize the service of the claimant against the post of permanent (Mali / Groom) within three months and

reinstate him to service within the said period. The management is further directed to pay 40% of the back wage that has accrued in favour of the claimant from the date of termination till the date of his reinstatement @ of the wage last drawn by him from the date of termination and till the actual date of reinstatement without interest within one month from reinstatement, failing which the amount so accrued shall carry interest @ 9% p.a from the date of termination and till the actual payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडेंट और मुख्य प्रशिक्षक, भारतीय सैन्य अकादमी, देहरादून- (उत्तराखंड) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शमशाद अली, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 23/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-14012/12/2012-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 616.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2013) of the Central Government Industrial Tribunal-cum-Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commandant and Chief Trainer, Indian Military Academy, Dehradun- (Uttarakhand) and Shri Shamshad Ali, worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-14012/12/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 23/2013

Date of Passing Award- 16th August, 2021

Between:

Shri Shamshad Ali,
S/o Shri Mazsood Ali,
Nanda Ki Chowki, P.O.: Chandrabani,
Dehradun. ... Workman

Versus

The Commandant and Chief Trainder,
Indian Military Academy.
Dehradun. ... Management

Appearances:-

Shri Mukesh Kumar (A/R) : For the Workman.

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Indian Military Academy and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/12/2012 (IR(DU) dated 28.02.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Indian Military Academy, Dehradun terminating the services of Shri Shamshad Ali, Cycle Repairer w.e.f 01.03.2012 in violation of provisions of Section 25 F, G, H of the Industrial Dispute Act, 1947 is unjustified? If so, what relief he workman is entitled to?"

As per the claim statement the claimant was working for the management as a cycle repairer in the Indian Military Academy Dehradun from April 2005 till the termination of his service in the year 2012. During these 8 years he was working regularly to the satisfaction of the employer and getting remuneration from them. The employer had never expressed dissatisfaction on the work of the claimant. On the contrary the employer had issued the experience certificate. While the matter stood thus, the employer IMA issued advertisement to fill up the vacancies in different posts by making permanent appointment in group –C cadre. 11 vacancies for the post of Bicycle repairer were advertised and the claimant being eligible for the same had submitted application of his candidature. He was allowed to appear in the written examination and roll no. 8342 was allotted to him. The claimant successfully qualified in the written examination and his name was included in the list of successful candidates. Being called upon, he appeared in the interview and the skill test on 31.01.2012.

Though he had performed very well in the interview and the member taking interview assured him that persons having experience shall be given preference over the inexperienced persons, a list was published in respect to the successful candidates. To his utter dismay his name was not in the list of successful candidates. Not only that he found persons having less qualification and less experience than him were declared successful. Being aggrieved he submitted an application under RTI to ascertain the procedure adopted for the selection since he suspected foul play in the process of selection. The information sought was not supplied. On the contrary the service of the claimant was terminated w.e.f 1.03.2012 in violation of the provisions of section 25- F, 25-G and 25-H, of the Id. Act. The claimant has further stated that during the period of his employment he had completed 240 days of work in a calendar year and thereby acquired temporary status. But the management instead of regularizing the service against the vacant post appointed less qualified and less experienced persons as a result of which he became victim of unfair labour practice. Thereby the claimant had prayed for a direction to the management to regularized his service against the permanent post and to reinstate him in the post of bicycle repairer with back wages and all other benefits as would deem fit.

The management filed written statement challenging the maintainability of the proceeding. It is the specific stand of the management that IMA is not an industry nor carrying out any activity which can be considered as a trade or business nor involved in any other activity related to production distribution or supply of goods or services meant for satisfying human wants. The management added that the Ministry of Labour and employment in their letter dated 10.07.2012 have clearly opined that the category –A training establishment under the DGMT at IMA Dehradun is not covered u/s 2 (j) of the Industrial Dipsute Act 1947. As such this Tribunal lacks the jurisdiction to adjudicate the matter.

With regard to the claim of the claimant it has been stated that the entire claim is based upon a misconception of fact and the Ministry of Labour and employment in a stereotype manner made the reference for adjudication. While denying the claim that the claimant was working as a bicycle repairer in IMA since 8 years it has been stated that the claimant was working as a Casual labour on daily wage basis in the mechanical transport section of IMA as and when required and getting the wage in accordance to the work done by him. While denying the certificates granted to the claimant and placed on record of this proceeding as authenticated documents of employment, the management had stated that the senior army officers might have issued those certificates in their personal capacity to help the claimant for his employment in other establishment. The said experience certificate cannot confer any right on the claimant for his absorption against a permanent post of IMA. While rejecting the stand of the claimant that a gate pass was issued to him as an employee, the management has stated that the premises of IMA being a prohibited area gate passes are issued to the persons entering into the premises for any kind of work. Issue of gate pass never confers any right to any person for employment. The management has admitted that advertisement was made to fill up the permanent post in group C including the post of bicycle repairer. It has also been admitted that the claimant had appeared in the examination, qualified in the written test and appeared for the skill test. But it has been disputed that the

claimant had performed well and got assurance from the selection board for his engagement. The management had specifically denied about the claim of the workman for working 240 days in a calendar year and there by acquiring temporary status. The management as further pleaded that the claimant is trying to make a back door entry into the service of IMA which stands opposed to the policy of public employment. Citing the judgment of the Hon'ble Supreme Court rendered in the case of **Secretary State of Karnataka Vs. Uma Devi**, the management has pleaded that the claim of the claimant is devoid of merit and liable to be rejected. The claimant filed reapplication denying the stand of the management.

On the rival pleadings of the parties the following issues have been framed for adjudication:

ISSUES

1. Whether the action of the management of IMA of Dehradun, in terminating the service of Shamshad Ali Cycle repairer w.e.f 1.3.2012 is unjustified? If so, what effect?
2. Whether the management / respondent is covered under 2 (j) of the I.D. Act 1947? If so its effect?
3. Whether the workman is refused to work offered by the respondent?
4. To what relief the workman is entitled to and from which date?

The claimant examined himself as WW1 and filed few documents marked in a series of WW1 to WW1/5, these document includes the gate pass issued to the claimant, the list of successful candidate in the written test for cycle repairer the list of successful candidate after the interview and skill test, photocopies of the attendance register for the year 2010, 2011 and part of 2012 i.e till the date of alleged termination. The claimant has also filed photocopies of his academic qualification and photocopies of newspaper clippings with regard to the allegation of malpractice and corruption in selection by the officials of IMA and investigation by CBI on the same. Similarly the management examined its establishment officer as MW1/. He proved certain document marked as a series MW1/1 (Colly). The document filed by the management are the letter correspondence between IMA and Ministry of Labour and employment, wherein the Ministry said that IMA is not an industry and does not fall under the definition of section 2 (j) of the Id. Act, 1947.

At the outset of the argument Ld. A/R for the claimant submitted that the management very well falls under the definition of industry and the proceeding is maintainable. He also submitted that any letter correspondence made between the ministry of labour and employment and IMA cannot supersede the judgment pronounced by the Hon'ble High court and the definition given under the statute . He also argued that when the claimant and some other persons standing in the same category were working as a casual worker for a pretty long period, the management instead of regularizing their service made advertisement to fill up those post is illegal and amounts to unfair labour practice. The Ld. A/R for the claimant also argued that the claimant though as a matter of principle should have been regularized against the permanent post considering his long service as a casual employee, he as an abundant caution had submitted application in response to the advertisement and despite performing well in the written and skill test he was not selected as malpractice was adopted in the process of selection.

The Ld. A/R for the management in reply argued that the Ministry in a mechanical manner forwarded the reference which stands against its own decision that the IMA is not an industry and any dispute between the management and its employees is not industrial dispute. Placing reliance in the case of Uma Devi referred supra he submitted that the claimant is trying to make a back door entry which is opposed to the policy of equal opportunity in public employment as mandated by the constitution.

FINDING

Issue No. 2.

This is a reference received from the Ministry of Labour and employment for adjudication of the dispute between the employee and the employer. In its pleading the management had raised objection on the maintainability of the proceeding solely on the ground that IMA is not an industry as defined under section 2(j) of the ID. Act 1947. To support the stand taken the management had filed some letter correspondence between the Ministry of Defence (Army) IMA and the Ministry of Labour and employment filed as MW1/1 (colly) . On the basis of these documents the Ld. A/R for the management argued that Ministry of Labour has stated in clear terms that IMA, which provides training to its commissioned officers, is not an industry and the reference is liable to be rejected for want of jurisdiction. The 1st schedule of the Industrial dispute Act, 1947 under serial no. 8 clearly states that the defence establishment is an industry of public utility services under sub clause (VI) of clause (N) of section 2 of the Act. Not only that on behalf of the claimant reliance has been placed in the case of Union of India Vs. CGIT and others reported in 1986 LAB.I.C 1269 in which the Hon'ble High Court of Calcutta have held that as per the Government orders of 1962 and 1972 Engineers store depot of defence establishment is a department of defence but the employees working under that establishment not being the

subject to Army Act are civilians and workman under the Industrial dispute Act. In this case the persons working for different casual work in the IMA not being the subject under the Army Act and being civilians very well fall under the category of workman under the Industrial Dispute Act and the establishment falls within the definition of industry. Any correspondence between the IMA and Ministry of Labour cannot take away the right of the claimant as a workman employed in any industry to do any manual or technical work since the letter correspondence between the department cannot defeat a right of the claimant guaranteed under the statute. The proceeding is thus held maintainable and the issue is accordingly decided against the management.

ISSUE NO. 1 &3.

The claimant has ventilated two grievances in his claim petition. Firstly he had worked for the management for 8 years since 2005 to 2012. Though by working for more than 240 days in a calendar year he had acquired the status of a temporary employee, the management did not regularized his service against the vacant permanent post. On the contrary the management made advertisement for the said post, conducted written and skill test and by adopting unfair means rejected the candidature of the claimant and gave appointment to the persons having less qualification and less experience. It has further been stated by the claimant that his service was illegally terminated and at the time of termination no notice, notice pay or termination compensation was paid to him. Thereby he had prayed for regularization of service and reinstatement into the service with full back wages. To support his stand he has filed photocopy of the gate pass, attendance register for the intervening period and certificates of education and experience exhibited during the hearing.

The management on the contrary by examining its establishment officer as MW1 has adduced evidence to the effect that the claim of the claimant is baseless and based upon misconception of facts. The witness examined by the management has admitted that the claimant was working in the premises of the management but not as the cycle repairer but as the need based casual labour in the technical section of IMA. He was being called for work as and when required and paid wage proportionate to his work. The witness for the management has also admitted in his examination that written and skill test for the post of bicycle repairer was conducted pursuant to the advertisement. For the purpose a committee was formed and the said committee conducted the skill test and listed out the successful candidates. This claimant could not qualify the skill test and has now come up with a false plea to challenge the selection process which is not an industrial dispute. While disputing the experience certificate and gate pass filed by the claimant the witness spoke in clear terms that the claimant had never worked for 240 days in a calendar year nor acquired temporary status to advance a claim for absorption.

Be it stated here that the claimant during the proceeding had filed an application u/s 11 (3) of the ID. Act for a direction to the management for production of document relating to his attendance register and payment of wage register but the management in its reply by filing some pages of the attendance sheet denied possession of the document relating to wage paid to the claimant and experience certificate issued. Thus the claimant had filed the photocopies of the document as secondary evidence which were taken on record.

It is always on the claimant to prove that he was under the employment of the management and also completed 240 days of work in a calendar year. To discharge the said burden the claimant has relied upon the attendance register filed by himself as well as by the management. The management had admitted that the claimant was working in the premises of IMA from 2005 to 2012 and not as a cycle repairer but as a casual labour in the technical section. It is the further stand of the management that he had never worked for 240 days in a calendar year.

There is no dispute about the proposition of law that onus to prove that the claimant was in the employment of the management is always on the claimant and it is for him to adduce evidence to prove the same. Such evidence may be in form of receipt of salary or wage for 240 days or record of his engagement for that year to show that he had worked with the employer for more than 240 days or more in a calendar year. In this regard reliance can be placed in the case of **Batla Co-operative Sugar Mills Ltd. Vs. Sowaran Singh (2005) 8 SCC 481 and in the case of Director of Fisheries, terminated division Vs. Bhikubhai Meghajibhai Gavda (2012)1 SCC 47**. On considering the oral and documentary evidence adduced by both the parties it is found that the claimant had worked for the management in the year 2010, 2011 and part of 2012 and his signature in the attendance register alongwith other similar employees were being taken regularly . The photocopies of the attendance register filed by the management clearly shows that the same continuous register was being maintain for permanent cycle repairer and casual cycle repairer indicating their status separately and for each month the name of the claimant had appeared under the category of casual bicycle repairer. This document of the management falsifies the stand of the management that the claimant was working as a casual labour on need basis. The management in this case is also guilty of suppressing material document like wage payment register which could have thrown light on the point of dispute.

The other stand taken by the management is that the claimant since never was an employee of IMA the question of terminating his service or complying with the provision of law laid u/s 25F , 25G and 25 H doesnot arise. But the oral and documentary evidence adduced by the claimant and discussed in the preceding paragraph

and in absence of evidence to the contrary clearly proves that the claimant was under the employment of the management for long 8 years and had completed 240 days of work in a calendar year.

Now it is to be seen if the claimant was subjected to unfair labour practice or not "**Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID. Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair labour practice. In the case this document filed by the workman as well as the management clearly proves that the claimant was made to work as a casual bicycle repairer for long 8 years and had completed 240 days of work in the preceding year of his termination which had conferred the status of temporary employee before his termination. But the management in utter disregard of law deprived him from being regularized and even did not consider his status and experience when he had participated in the selection process to fill up the permanent vacancy in the post of cycle repairer.

On behalf of the management strenuous arguments was advanced relying upon the judgment of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006) 4 SCC page 1** to say that the claimant if would be absorbed against the permanent vacancy the same would amount to a back door entry and oppose the policy of equal opportunity in public employment. It is true that in the case of Uma Devi refer supra the Hon'ble Supreme Court have held that the persons who was appointed on temporary of casual basis without following proper procedure cannot claim absorption or regularization since the same is oppose the policy of public employment. But the case of the claimant to this proceeding is not a case of claiming automatic regularization or absorption. He had appeared in the written test and qualified for the skill test. But his candidature was rejected without letting him know the reason of rejection and how the other candidates were preferred over him. This itself amounts to unfair labour practice. **Unfair labour practice** as defined u/s 2(ra) means any practice specified in the 5th Schedule of the ID. Act. Under the said 5th Schedule to employ the workman as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workman amounts to unfair labour practice as has been done in the case of this claimant.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus, after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen has been subjected to Unfair Labour Practice being engaged for work on temporary basis for a prolonged period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

> "Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves the continuous service of the workman for the management on temporary basis since the year 2005 to 2012, the decision of the management in not allowing him for regularization of his service when there was vacancy in the permanent cadre of cycle repairer is held to be illegal and unjustified.

The witnesses examined by both the parties and the documents placed by them on record clearly proves that the claimant was subjected to unfair labour practice for the denial to absorb him against regular vacancy.

The management has taken a plea that he was asked to continue as casual worker but he refused to do so. This itself shows how the claimant was unfairly treated by the management. These two issues are accordingly decided in favour of the claimant.

ISSUE NO. 4.

Here is a case where as indicated above the workman has been victimized on account of unfair labour practice. Though under the scope of the reference this Tribunal is to adjudicate on the legality and justifiability of the termination of service of the claimant, the industrial adjudicator under the industrial dispute act enjoys wide power for granting relief which would be proper under a given circumstance. In the case of **Hari Nandan Prasad and another Vs. Employer I/R to Management of FCI, reported in (2014) 7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon the Industrial Tribunal and labour court by the Industrial Dispute Act is wide. The Act, deals with industrial dispute, provides for conciliation, adjudication, settlement and regulates the right of the parties and enforcement of the awards and settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible under common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confine to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

In this case the management has not discharged his burden of proving the gainful employment of the claimant during the intervening period between the termination and adjudication. On the contrary the management had admitted through its witness that the provision of section 25 F, 25G and 25H were not followed at the time of termination since he was not their employee. Keeping the situation in view it is felt proper to issue a direction to the management to regularize the service of the claimant within 3 months in the post of bicycle repairer.

Considering the fact that the claimant has not been gainfully employed during the intervening period it is directed that he shall get 40% of the back wage since the date of termination and till his service is regularized. This issue is accordingly answered. Hence allowed.

ORDER

The reference be and the same is answered in favour of the workman. It is held that the action of the management in not regularizing the service of the claimant who had participated in the selection process for permanent bicycle repairer is illegal, unjustified and amounts to unfair labour practice since the workman had worked in the management for a pretty long period as casual worker. The management is hereby directed to regularize the service of the claimant against the post of permanent bicycle repairer within three months and reinstate him to service within the said period. The management is further directed to pay 40% of the back wage that has accrued in favour of the claimant from the date of termination till the date of his reinstatement @ of the wage last drawn by him from the date of termination and till the actual date of reinstatement without interest within one month from reinstatement, failing which the amount so accrued shall carry interest @ 9% p.a from the date of termination and till the actual payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2021

का.आ. 617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत इलेक्ट्रॉनिक्स लिमिटेड, मुंबई (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रकाश अभिमन्यु तावड़े, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-1 मुंबई के पंचाट (संदर्भ संख्या CGIT-01/08/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-42011/65/2010-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th September, 2021

S.O. 617.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-01/08/2011) of the Central Government Industrial Tribunal-cum-Labour Court -1 Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Electronics Limited, Mumbai- (Maharashtra) and Shri Prakash Abhimanyu Tawade, Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-42011/65/2010-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

PRESENT: JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO. CGIT-1/08/2011

Parties:

Employers in relation to the management of
Bharat Electronics Ltd.,

AND

Their workman (Shri Prakash Abhimanyu Tawade)

Appearances:

For the Management : Mr. S.N. Desai, Adv.

For the Union : Mr. P.A. Tawade (Workman)

State : Maharashtra

Mumbai, dated the 13th day of August 2021

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947, the Central Government referred the dispute for adjudication to this Tribunal. The terms of reference as per schedule are as under:

> *"Whether the domestic inquiry initiated against the workman Shri Prakash Abhimanyu Tawada is legal and justified? Whether the caste verification procedure followed by the management of BEL is legally correct? What reliefs and actual privileges is the workman entitled to?"*

2. Briefly stated facts are as following. The first party is a unit situated at Taloja Navi Mumbai in the state of Maharashtra. The second party workman Shri Prakash Abhimanyu Tawada (hereinafter referred to as 'the Workman') was employed as Laboratory Assistant "B". The said post was reserved for the Schedule Tribe. The workman was appointed on 11-02-1995 as Laboratory Assistant "B". He had furnished a caste certificate

bearing No. MAG/1968/ER/48 issued to him by the Executive Magistrate – Jalgaon, Tahsildar Office, Jalgaon. At the time of his appointment he had furnished only the Xerox copy of the said caste certificate dated 28-04-1989 and not the original. The workman accepted the terms and conditions of the employment and filled the Attestation Form on 26-01-1995 as required by the terms of the appointment. The Attestation Form was duly signed by the workman in support of its clause 9(b). The workman had produced photocopy of the caste certificate dated 28-04-1989 issued by the Executive Magistrate, Jalgaon.

3. The Second Party Workman appointed as Laboratory Assistant "B" on 11-02-1995 and was confirmed with the services on completing the probationary period satisfactorily from 11-08-1995. The Workman raised industrial dispute under Section 2(k) read with Section 2A of the Industrial Dispute Act, 1947 against the management of Bharat Electronics Ltd over the demand for reinstatement by the management with effect from 05-01-2007 with continuity of services with full back wages and consequential benefits.

4. The Workman was dismissed from the services with effect from 05-01-2007 by the management and the appeal of the Workman was rejected by the Appellate Authority of BEL vide order dated 10-02-2007. It is the case of the Second Party Workman that at a later date he has produced the original caste certificate from the competent jurisdiction that is S.D.O., Bhusawal Division, Bhusawal. It is further the case of the Second Party Workman that initially he submitted a Xerox Copy of the caste certificate issued by the Tahsildar, Jalgaon dated 28-04-1989 as required by the First Party the original of which he could not submit when demanded by the First Party as it was lost in the recorded flood in Mumbai/Panvel on 25th, 26th, and 27th July 2005. He also intimated the First Party to that effect by producing certificate from Police Station, Panvel and Tahsildar, Panvel dated 23-11-2005. Further, it is the case of the Workman that it was legal requirement to verify the caste certificate by the committee constituted by the Government of Maharashtra but the First Party with undue haste referred the Xerox copy to the Tahsildar, Jalgaon which was erroneous and unlawful. And further, principle of natural justice was not followed in the enquiry as the reply of Tahsildar was never been shown to him which was the basic and crucial document.

5. It is also the case of Second Party Workman that the domestic enquiry was conducted in haste without following the principle of natural justice with utmost biased attitude and findings are perverse, charge-sheet is vague, and allegations therein are false and frivolous. It is also stated that Tahsildar cannot be the legal and valid authority for verification of caste certificate. It is further stated that there is inherent error to the extent that the certificate number MAG/1968/ER/48 dated 24-04-1988 differs from the certificate number shown in the charge-sheet i.e. MAG/1968/ER/48 dated 28-04-1989. The report of the ADM, Jalgaon, verification of Schedule Tribe certificate was done in respect of caste certificate number MAG/1968/ER/48 dated 24-04-1988 with reference to the workman but the First Party acted upon the report of Tahsildar dated 14-11-2005 which was without jurisdiction as neither it was issued under the authority of the District Collector, Jalgaon nor it was sent through District Collector, Jalgaon. It is also stated that the reply of the Tahsildar, Jalgaon dated 30-09-2005 was related to the caste certificate MAG/1968/ER/48 dated 24-04-1988 and not MAG/1968/ER/48 dated 28-04-1989. This discrepancy has not been looked into by the enquiry officer. It is contended by the Workman that he has submitted original caste certificate obtained from the competent authority vide his letter dated 29-01-2007 at the appeal stage but First Party intentionally failed to act upon the same. Further, verification of the caste certificate is required to be made under the special legislation passed by Government of Maharashtra known as Caste Certificate Act, 2000/2001.

6. In reply to the above contentions raised by the Second Party Workman, the case of the First Party is that Department of Personnel and Training, Government of India issued memorandum on 25-05-2005 directing all the departments of Government of India to re-verify the caste of persons who have secured employment in Government of India and in Government of NCT, Delhi and its agencies under the reserved categories on the strength of forged/false certificate. This memorandum of the Government of India is the outcome of the directions of Hon'ble Delhi High Court in Civil Writ Petition No. 5976 of 2003. In the light of judgment of Hon'ble Delhi High Court, Government of India decided to conduct detailed verification of all such appointments done since 1995. The Government appointed Additional Director, CBI as Nodal Officer to coordinate the mechanism of verification. Pursuant to the office memorandum, the First Party wrote a letter dated 29-08-2005 to the District Collector, Jalgaon enclosing therewith a photocopy of Schedule Tribe Certificate dated 28-04-1989 on which the Workman had relied and which was issued by the Executive Magistrate, Jalgaon to the Workman for the purpose to enquire whether it was true or not. A request was made to furnish verification report by 15-09-2005 as the Government was directed to apprise the Hon'ble Delhi High Court in this regard.

7. It is contended by the First Party that the Additional District Magistrate, Jalgaon by its report dated 25-10-2005 stated that the certificate was not issued by the Tahsildar, Jalgaon. This report was further corroborated with the report of Tahsildar, Jalgaon dated 30-09-2005. The report very clearly mentioned that there is no entry against the number and date of the alleged certificate having being issued to Mr. Prakash Abhimanyu Tawada. It is the case of the First Party that the charge-sheet was issued to the Workman dated 27-06-2006 for producing forged and false certificate which constitutes misconduct under Clause 17(A)(85) of the

Certified Standing Order. Explanation from the Workman was called who submitted written reply dated 08-07-2006 denying the charges. Thereafter, the domestic enquiry was conducted. The domestic enquiry started on 02-09-2006 and concluded on 25-11-2006. The Workman participated in the enquiry along with his defense counsel Shri Manoj Mhate. Reasonable opportunities had been afforded to the Second Party Workman. The witness of the First Party was cross-examined. The Workman had not led any oral evidence in the enquiry. All the proceedings were signed by the Workman as well as his defense representative. The Enquiry Officer submitted his report on 14-12-2006. The Enquiry Officer held the Workman guilty of the misconduct under clause 17(A)(85) of the Certified Standing Order. It is the case of First Party that copy of the findings of the Enquiry Officer was sent to the Workman on 25-12-2006, the Workman submitted his reply on 29-12-2006 which was not found satisfactory. Thereafter, the disciplinary authority after considering notes of enquiry, findings of Enquiry Officer, and the documents on record as well as explanation of the Workman decided to dismiss the Workman from the service with effect from 05-01-2007.

8. Heard both the parties at considerable length.

9. In the light of contentions raised by both the parties, this Tribunal perused the materials available on record. Following are the points for determination in this reference:

a. Whether the domestic enquiry initiated against the workman Shri Prakash Abhimanyu Tawada is legal and justified?

b. Whether the caste verification procedure followed by the management of BEL is legally correct?

c. What reliefs and actual privileges is the workman entitled to?

10. With regard to the first issue that "Whether the domestic enquiry initiated against the workman Shri Prakash Abhimanyu Tawada is legal and justified?", it is relevant to note that after receipt of the verification report, the charge-sheet was issued to the Workman and charge was under Section 17(A)(85) of the Certified Standing Order. The Workman submitted his reply which on being found not to be satisfactory by the First Party, it initiated the domestic enquiry. It also transpires that during the enquiry proceedings, Workman was represented by an advocate. During the enquiry, the relevant documents were produced by the First Party which are marked as Exhibit M1~M25 while Workman also produced documents which are marked as Exhibit D1~D9. The enquiry was started on 02-09-2006 and concluded on 25-11-2006. During the enquiry, Dr. P.W. Mahajan was examined as a witness who conducted the authentication/verification procedure of the caste certificate which is involved in the enquiry. This witness was cross-examined by the defense counsel as well. After closure of the evidence of the First Party, the Second Party Workman in his defense produced certain documents which are exhibited but none of the witness has been examined in support of the defense case. Findings of the enquiry officer were submitted on December 14, 2006.

11. This domestic enquiry has been challenged before this Tribunal mainly on the grounds that enquiry was conducted in violation of the principle of natural justice, reasonable opportunity was not afforded to the Workman, and relevant documents with related details were not furnished to the Workman. But I am not in agreement with this contention of the Workman because it transpires from the available records that charge-sheet is very clear about the relevant details connected with the issues under enquiry. The charges leveled against the Workman are specific and categorical. Sufficient and reasonable opportunities were afforded to the charged Workman and he was also allowed to be represented by a defense counsel. So, I am of the definite view that principle of natural justice has been followed. Thus, the domestic enquiry can neither be said to be unfair nor improper.

12. The conclusion of the Enquiry Officer to the effect that caste certificate submitted by the charge-sheeted employee at the time of joining of his post in the establishment (Bharat Electronics Limited) was found to be not issued by the Tahsildar office, Jalgaon. This finding is based on the documents and evidence adduced in the enquiry such as abstract of the caste register maintained in the office of Tahsildar, Jalgaon and the supporting evidence of Mr. Mahajan who has been cross-examined by the defense counsel with nothing adverse has been shown to this Tribunal to disbelieve this witness. It is pertinent to note that the charge-sheeted employee secured his employment in the year 1995 on the basis of Xerox copy of the caste certificate but he never tendered the original caste certificate. The explanation of the Workman that his original caste certificate was lost in the floods of the year 2005 even if assumed to be true has become immaterial as enquiry proceeding conducted involved the authentication/verification of its Xerox with its issuing authority itself.

13. It is not out of place to mention that when process of caste certificate verification started in compliance of the office memorandum issued by Government of India, the Workman approached the District Authorities at Bhusawal and obtained a fresh caste certificate. It is to note that the enquiry pertains to the authenticity of the caste certificate issued by the Tahsildar, Jalgaon on the basis of which Workman secured the appointment in the year 1995 and at that time he filed the Xerox copy of the caste certificate dated 28-04-1989 stating that it was issued by the authorities at Jalgaon.

14. Further, it would be relevant to reproduce Clause No. 17(A)(85) of the Unit's Certified Standing Orders under which it constitutes "misconduct" if: *"17(A)(85) Making false statement or suppressing material facts in his application for employment in the Company or in the attestation form or during medical examination or in furnishing personal particular while in service."* Moreover, the Attestation Form that was duly signed by the Workman contained Warning 1 which read as "*The furnishing of false information or Suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Company*" and also another Warning 3 which reads as "*If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services would be terminated without notice*".

15. Under these facts and circumstances, the explanation tendered by the Workman before this Tribunal that caste certificate issued afresh by the District Authorities at Bhusawal should have been considered for enquiry in place of the caste certificate issued by the Jalgaon authorities is not acceptable. On the basis of the aforesaid reasons, it can be safely concluded that the domestic enquiry conducted by the First Party is **legal and justified**. The referred issue in Para 9/(a) of this order is decided accordingly.

16. Now, with regard to the next issue that *"Whether the caste verification procedure followed by the management of BEL is legally correct?"*, it is pertinent to mention that in compliance of the office memorandum dated 25-05-2005 issued by the Government of India in compliance of the direction of Hon'ble Delhi High Court in Civil Writ Petition No. 5976 of 2003, the detailed verification of caste certificate of Schedule Tribes who on that strength secured appointment since 1995 were to be verified/authenticated. The office memorandum directed all the Ministries and Departments to initiate the task of collecting details of all those appointees since 1995 who got the employment with fake/false/invalid caste certificate all over India. The relevant excerpt from the office memorandum vide letter no. 230/08/2005-AVD II dated 25-05-2017 is reproduced as below:

> *"...The original ST certificate produced at the time of appointment or whenever verified last, may be taken in personal custody by the CVO. If these certificates are found to be forged/false, these may have to be produced in the appropriate court for taking action according to the law.*
>
> *4. After obtaining the ST certificates, these may be subjected to verification by sending them to the concerned district authorities viz. District Collectors, Deputy Commissioners and District Magistrates under the intimation to the Chief Secretary of the State concerned for confirming the authenticity of the certificates or certifying that the government employee actually belongs to a Schedule Tribe in those cases where records are not available for any reasons."*

Therefore the procedure followed by the First Party is in ratio with the office memorandum received from Government of India, Department of Personnel and Training for implementation of directions of the Hon'ble Delhi High Court in CWP No. 5976/2003.

17. Further, in the present case, First Party by its communication dated 29-08-2005 sent a letter to District Collector Jalgaon enclosing photocopy of the caste certificate produced by the Second Party Workman at the time of appointment issued by the Executive Magistrate, Jalgaon under code number MAG/1968/ER/48 dated 28-04-1989. It is relevant to refer that report of ADM, Jalgaon dated 25-10-2005 stated that the certificate was not issued by the Tahsildar, Jalgaon which was confirmed from the report of Tahsildar, Jalgaon dated 30-09-2005. In this way, I am of the view that as per instructions under the office memorandum to verify the caste certificate by referring the same to District Authorities does not in any way can be said to be unjustified. Further to add that it is proved from the records that Workman was appointed in the year 1995 as Laboratory Assistant "B" and placed Xerox copy of the caste certificate dated 28-04-1989 issued by the Executive Magistrate, Jalgaon, its original caste certificate was not produced. The caste certificate which was produced by the Workman at the time of appointment was sent for the authentication/verification and it was found that the said certificate was not issued by the Tahsildar, Jalgaon. This act of the First Party Management was is in strict compliance with the instruction of office memorandum which was based on the direction given by the Hon'ble Delhi High Court in Civil Writ Petition No. 5976 of 2003. Thus, the act of the management of BEL following the instructions issued by the office memorandum is found to be proper. On the other hand, there was no instruction to get the caste verification from the Scrutiny Committee constituted by the Government of Maharashtra. So, the case under enquiry was aimed at cross verifying or authenticating the existing records related to the appointments. In other words, it was the case of verification of the caste certificate on the basis of which Workman secured his employment by filing it at the time of his initial appointment in the year 1995.

18. So far as the argument of the Workman that it was legal requirement to verify the caste certificate by the committee constituted by the Government of Maharashtra is concerned, it would be pertinent to make the mention of relevant provisions of Maharashtra Act No. XXIII of 2001, Section 4 of which deals with the subject of who can issue the caste certificate reads as below:

"4. (1) The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a Caste Certificate within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

(2) A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee."

Whereas, Section 6(3) of the Act which deals with the verification of caste certificates issued by a competent authority is reproduced as below:

"(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative societies or any other Government aided institutions who has not obtain such certificate."

Combined reading of the above related provisions clearly infers that there should be a validity certificate issued by Scrutiny Committee in addition to a valid caste certificate issued by a competent authority in order to certify that such caste certificate is not false or forged. However, as evident from the facts and circumstances of this case, even the caste certificate that was claimed by the Workman to have been issued by the competent authority entrusted with the powers to issue such certificate was not proved to have been issued at all and moreover disproved to the extent that the caste certificate bearing same number was issued in the name of some other person from that authority itself. Therefore, the stage to refer caste certificate to Scrutiny Committee does not arise at all.

19. So far as the arguments of Workman with regard to discrepancy of the dates mentioned in the reports is concerned, it appears that it was typographical mistake as it is confirmed that the report is in connection of the certificate number MAG/1968/ER/48 dated 28-04-1989 which was filed by the Workman at the time of securing appointment. So far as the documents filed by the Workman during the course of enquiry marked as D4~D9 are concerned, it is to be noted that these documents pertains to the year of 2005 whereas the issue involved in the enquiry was with regard to the caste certificate dated 28-04-1989 which was found to be not genuine certificate rather it was false/forged document.

20. In the view of aforesaid discussions, I am of the view that procedure followed by the First Party for authentication/verification of the caste certificate dated 28-04-1989 which was submitted by the Workman at the time of securing his appointment is **legally correct**. The issue in Para 9(b) of this order is answered accordingly.

21. Now, the third and the last issue which requires consideration with regard to the relief if any available to the Workman is concerned, I would like to state that it is proven fact that the Workman secured his appointment in the year 1995 by producing Xerox copy of the caste certificate and relevant documents were signed and produced by the Workman and thereafter in compliance of the instructions in the office memorandum it was found to be false and fabricated and resultantly the services of the Workman was terminated on the proof of the charge of misconduct. Aggrieved by the enquiry finding, appeal was preferred by the Workman which was rejected. Thereafter, industrial dispute was raised and conciliation proceeding started which failed and further on the basis of failure report Central Government made this reference to this Tribunal. In the backdrop of all which has been stated above, this Tribunal finds that domestic enquiry is legal and justified and the caste certificate verification procedure adopted was legally correct.

22. Further, to add it would be relevant to refer the ratio of the judgment of Hon'ble Apex Court as held in Regional Manager Central Bank of India versus Madhulika Guru Prasad Dahir and Others reported in (2008) III CLR 427 that *"He who comes to the Court with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud".*

23. In the light of aforesaid reasons and discussions, and also keeping in mind the ratio of the judgment of Hon'ble Apex Court, I am of the definite opinion that **no relief can be granted** to the Second Party Workman in this reference.

24. Award is passed accordingly.

Let the copy of this order be sent to both the parties and uploaded over official web-portal of this Tribunal and file be consigned to the record room after due compliance.

JUSTICE R. N. KAKKAR, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2021

का.आ. 618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 44/2017) को प्रकाशित करती है।

[सं. एल-39025/01/2021-आईआर-(बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 14th September, 2021

S.O. 618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, New Delhi shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen.

[No. L-39025/01/2021-IR(B-II)]
RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 44/2017

Date of Passing Award- 25th August,2021

Between:

Shri Pradeep Sharma S/o Subhash Chand Sharma,
Through:- Shri Chander Shekhar Ajad,
E-227/D, Pratap Vihar,
Ghaziabad. ... Workman

Versus

1. Indian Overseas Bank, Zonal Office,
NCR, M-13, Punj House Anex,
Cannought Place, New Delhi-110001.

2. Indian Overseas Bank, Branch,
Indirapuram, 1/3 Vaibhav Khand,
Amarpali Green, Indirapuram,
Ghaziabad, Uttar Pradesh. ... Managements

Appearances:-

Shri Chander Shekhar (A/R) : For the Workman

Shri Ujwal Kumar (A/R) : For the Management

AWARD

This is an application filed u/s 2A of the Id Act 1947 wherein the claimant has challenged the action of the management Bank in terminating his service illegally and without following procedure laid down under the Id Act.

As per the narratives in the claim statement the claimant was working as a Temporary Messenger/ Sweeper against a permanent post in the Branch of the management Bank at Navyug Market Ghaziabad w.e.f 01.08.2008. He was not issued with any appointment letter nor the facilities like paid leave etc were provided to him. He was often raising objection with the management in this regard. The demand made by him created dis-satisfaction in the mind of the Branch manager who on 02.07.2016 terminated his service by refusing to accept

him for work. The claimant for some days went to the Bank and tried to convince the Branch Manager to take him back into work, which was not accepted. Finding no other way the claimant served a demand notice by registered post to the Manager and raised a dispute before the Central Labour Commissioner Dehradun alleging that he has been made a victim of unfair Labour Practice and the management while terminating his service had not complied with the provisions of section 25-F of the Id Act. Before the Labour Commissioner conciliation proceeding was initiated. But for the adamant attitude of the management no fruitful result could be achieved. The Labour commissioner issued a failure report and the claimant filed the present petition before this tribunal. It has also been pleaded that the management Bank in clear violation of a settlement reached between the Bank workers union and the Bank management for absorption and regularization of casual workers fulfilling the requirement criteria in phased manner terminated his service. With such allegation the claimant has prayed for a direction to the management Bank to reinstate him into service with continuity and benefits including back wages from the date of termination and absorption against the permanent vacancy.

Notice being served the management Bank appeared and filed a written statement denying all the stand taken by the claimant. It has been specifically pleaded that the claimant was working only as a daily wager that too occasionally for the bank and was never under the regular employment. Hence, he has no locus standi or cause of action to raise this industrial dispute which is liable to be dismissed.

During the pendency of the proceeding the claimant filed a petition for a direction to the management to produce certain documents. The management also filed a petition to file additional Ws in the matter. By order dated 10thApril 2019 this tribunal allowed the petition filed by the claimant u/s 11(3) of the Id Act since the claimant admitted that the photocopies of the documents called for since has been filed by the management he is ready to admit those documents into evidence. After hearing the other petition filed by the management seeking leave for filling additional WS, the tribunal found no reason of allowing the same and consequentially the prayer for additional WS was rejected. Thus, on the rival pleadings of the parties the following issues were framed for adjudication.

ISSUES

1. Whether the termination of the claimant by the management is illegal and against the provision of ID Act.
2. Whether the claim petition is not maintainable against the management in view of the various preliminary objections.
3. Whether the claimant is entitle for reinstatement into service with back wages as claimed.

The claimant examined himself as WW1 and proved several documents marked as WW1/M1 to WW1/M12. All these documents are the attested photocopies filed by the management during the pendency of this proceeding. Similarly the management examined the Senior Manager of the Bank as MW1 who also proved some documents marked in a series of MW1/A to MW1/B. The documents exhibited by the claimant include the undertaking taken by the Bank containing all the details for his absorption as a part time sweeper of the Bank, the documents in proof of his engagement in the Bank for the period 01.11.2007 to 11.07.2016. Similarly the document relied upon by the management Bank are the photocopies of the memorandum of settlement arrived between the Union of the Bank Employees and Management of the Indian Overseas Bank dated 17th February 2011 and the circular issued by the Bank Management containing the guidelines framed for absorption of temporary messengers/sweepers pursuant to settlement dated 17 02.2011. Both the parties made thorough cross examination of the witness examined by their adversaries.

At the outset of the argument the Ld. A/R for the claimant submitted that the Management Bank had engaged number of persons all over India as temporary sweepers and messengers. The All India Overseas Bank employee Union had raised an Industrial Dispute before the Labour Commissioner (Central) Chennai demanding absorption of those casual workers in the Bank as temporary and part time workers against permanent vacancies. The Management of the Bank and the Union had a detail deliberation and at the end settlement was arrived on 17.02.2011 wherein it was agreed that the absorption shall be made in phased manner subject to fulfillment of the requisite qualification and meeting the age criteria. The Management Bank accepted the same and issued a guideline to that effect on 23.03.2011.Though the claimant was having the requisite qualification and was under the required age group the manager of the Bank in a vindicative action terminated his service illegally. At the time of termination he had already completed work for 240 days in a calendar year and had acquired temporary status. He had also submitted undertaking in proper format as desired by the management. But the management ignoring all these things and without following the procedure of law laid u/s 25F of the Id Act terminated his service.

The Ltd. Counsel for the Management Bank in his reply argument submitted that the claimant was never under the payroll of the management and thus, the question of terminating his service doesn't arise. He

was working as a casual worker intermittently on need basis and paid wage proportionate to the work done. For want of work his engagement was discontinued and that cannot be termed as termination of service.

FINDINGS

Issue No.1 and 2

It is not disputed that the claimant was working as a part time Sweeper/messenger of the Bank w.e.f 01.08.2008 to 02.07.2016. On behalf of the claimant documents have been proved which clearly shows that during this period he was receiving remuneration by cash from the Bank. Not only that certain vouchers have been filed which proves that the claimant Pradeep Sharma was being paid travelling allowance for carrying letters and documents to the head office. These are not the documents of the claimant but the documents which are the attested copies of the originals produced by the management Bank. Not only that it is also not disputed that a bipartite settlement was made between the Management Bank and the said Bank employee union on 17.02.2011 at Chennai. The copy of the settlement has also been filed by the management Bank. As per the said settlement a temporary workman is he who has been appointed for a limited period of work which is of an essentially temporary nature or who is employed temporarily in the work of permanent nature. As per this settlement the temporary workman will be given preference while filling of the permanent vacancies provided he meets the criteria relating to qualification and age. As per this settlement the exercise of absorption was to be done on phased manner as one time measure and cannot be claimed as a precedent. The copy of the settlement filed by the Bank and exhibited by the claimant clearly shows that in the first phase the workers who have worked for more than 5 years in a Branch and completed 240 days or more continuously in a calendar year as on 15.11.2010 shall be absorbed in phase1 before 30.06.2011. Similarly persons who have worked as casual/temporary messengers/sweeper for more than 3 years but less than 5 years in any of the Branch and completed 240 days or more in a calendar year as on 15.11.2010shall be absorbed in phase-2 once the absorption under phase-1 is completed subject to their submitting the required information/certificates. Similarly the persons working as casual/temporary messengers/ sweepers and have completed 240 days or more but have worked for less than 3 years as on 15.11.2010 shall be absorbed in phase-3. As per the settlement the persons eligible and desirous of the benefit had to submit an undertaking and declaration of their eligibility.

Not only that keeping the settlement in view the Bank Management on 23.03.2011 issued a circular to all the Branches Regional Offices and other officers containing a guideline for absorption of temporary messengers/sweepers as decided in the settlement. In the said circular strict instruction was imparted not to make any adhoc engagement of temporary messengers/ sweepers in any vacancy. This was issued pursuant to the settlement between the Management Bank and All India Overseas Bank employees union signed on 17.02.2011.

As seen from the record this claimant had worked for the Bank from 01.08.2008 to 02.07.2016 and had worked for more than 05 years continuously and within the prescribed age limit having the requisite qualification. Thus, he was entitled to be absorbed during the phase-1 of the absorption process. The undertaking given by him as per the requirement of the settlement and marked as exhibit WW1/1 clearly shows that the Branch Manager while forwarding his undertaking to the Head Office had appended a certificate as the Branch Head wherein it was mentioned that the claimant has been working in the Branch since 2008 and worked continuously for 240 days in a calendar year preceding to 15.11.2011. This document was confronted to MW1 who admitted the contents and the certificate given by the then Branch Manager. Thus, from this document it is admitted and proved that the claimant was working for the Bank since 01.04.2008 as a part time sweeper and had completed 240 days of work preceding to the date of settlement and was also meeting all the criteria's laid down for his absorption as a part time sweeper against permanent vacancy. But in this case the Bank management in gross violation of the terms of the settlement and its own circular referred above terminated the service of the claimant and took a false plea in the WS that the claimant was never a part time sweeper of the Bank but a daily wager engaged on need basis.

The Ld. A/R for the management strenuously argued that the claimant since was engaged for intermittent work of the Bank without due process, his candidature cannot be considered for engagement as PTS. To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.** On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance since they were prevented from participating in the selection procedure describing the same as unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009) 8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Now it is to be seen if the claimants of this proceeding were subjected to unfair labour practice or not. **"Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair Labour Practice. In this case the document filed by the workman and marked as WW1/4 clearly indicates that these claimants are working in the different branches of the Bank since the year 2010 and they qualify for consideration to the post of permanent PTS by virtue their age and qualification. The management in utter disregard of law, deprived them from participating in the selection process on a false plea that they are not temporary PTS and no application was submitted by them.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period.

In this case the oral and documentary evidence since proves the continuous service of the workman on temporary basis since 2008, the decisions of the Branch Manager in not allowing him to continue in work which was a condition precedent for his absorption against the post of Permanent PTS in the first phase of settlement is held to be illegal and unjustified. There is no evidence placed by the Bank to prove that the provisions of section 25F of the Id Act was complied at the time of his termination by giving him notice of termination, notice pay or termination compensation.

The witness examined on behalf of the Bank during cross examination has clearly admitted that the document marked as exhibit WW1/1 is a letter sent by the Branch Manager to the Head Office recommending regularization of the service of the claimant. No explanation has been offered as to why when his claim for absorption was pending before the Head Office and he was eligible in all respect for absorption, why his service was terminated. Thus, it is felt proper to give some direction to the Management Bank for his absorption in the post of Permanent PTS.

The Ltd. Counsel for the management at this juncture submitted that the claimant has only prayed for his reinstatement in the post where he was working with back wages. Thus, the tribunal should not issue any direction for his absorption. Though, under the scope of the claim petition this tribunal is to adjudicate about the legality and justifiability of the alleged termination and reinstatement prayed for, the Industrial adjudicator under the ID Act enjoys wide power for granting relief which would be proper in a given circumstance. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confine to administration of justice in accordance with law. It can

confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the workman has been victimized on account of the unfair labour practice by the Bank. The post for which he is aspirants is to be filled up in view of the bipartite settlement dated 17.02.2011. There is no evidence adduced by the Management that no post is vacant for the same. On the contrary the higher management of the Bank had issued direction to the Branches and Regional offices by its circular dated 23.03.2011 marked as MW1/B not to fill up those posts by adhoc appointment since those are to be filled up in phased manner by absorbing the persons working as casual workers. Keeping the situation in view it is felt proper to issue a direction to absorb and regularize the service of the claimant against the post of permanent PTS (Part time Sweeper) from the date he was illegally terminated, which would meet the ends of justice. This direction is specific in respect to this workman of the claim petition. These two issues are accordingly answered in favour of the claimant.

ISSUE NO.3

In view of the finding arrived while deciding issue No.1 and 2 it is held that the claimant is entitled to reinstatement into service with back wages from the date of termination ie. from 11.07.2016. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the claimant. it is held that the action of the Bank in terminating the service of the claimant w.e.f 02.07.2016 and thereby depriving him of his rights of absorption as per the bipartite settlement is illegal, unjustified and amounts to unfair labour practice since the claimant by working for more than 240 days in the calendar year preceding to the cutoff date given in the settlement and having fulfilled all other criteria is entitled for absorption. The Bank is hereby directed to reinstate the claimant within 1 month from the date of publication of this award and pay him 50% of the Back wage as per the last drawn wage within one month hence. The Bank is further directed to regularize the service of the claimant against the post of permanent PTS of the Bank within 3 months from the date of publication of the award. The Back wages as directed above shall carry interest @9% from the date of accrual till the actual payment is made in case the Bank would fail to pay the same within the time stipulated in this order. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2021

का.आ. 619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 43/2017) को प्रकाशित करती है।

[सं. एल-39025/01/2021-आईआर-(बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 14th September, 2021

S.O. 619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, New Delhi shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen.

[No. L-39025/01/2021-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 43/2017

Date of Passing Award- 25th August,2021

Between:

Shri Sanjay Kumar S/o Shri Harpal,
Through:- Shri Chander Shekhar Ajad,
E-227/D, Pratap Vihar,
Ghaziabad. ... Workman

Versus

1. Indian Overseas Bank, Zonal Office,
NCR, M-13, Punj House Anex,
Cannought Place, New Delhi-110001.

2. Indian Overseas Bank, Branch,
Indirapuram, 1/3 Vaibhav Khand,
Amarpali Green, Indirapuram,
Ghaziabad, Uttar Pradesh. ... Managements

Appearances:-

Shri Chander Shekhar (A/R) : For the Workman.

Shri Ujwal Kumar (A/R) : For the Management

AWARD

This is an application filed u/s 2A of the Id Act 1947 wherein the claimant has challenged the action of the management Bank in terminating his service illegally and without following procedure laid down under the Id Act.

As per the narratives in the claim statement the claimant was working as a Safaikaramchari (sweeper/messenger) against a permanent post in the Branch of the management Bank at Indrapuram Ghaziabad w.e.f 01.11.2007. He was not issued with any appointment letter nor the facilities like paid leave etc were provided to him. He was often raising objection with the management in this regard. The demand made by him created dis-satisfaction in the mind of the Branch manager who on 11.07.2016 terminated his service by refusing to accept him for work. The claimant for some days went to the Bank and tried to convince the Branch Manager to take him back into work, which was not accepted. Finding no other way the claimant served a demand notice by registered post to the Manager and raised a dispute before the Central Labour Commissioner Dehradun alleging that he has been made a victim of unfair Labour Practice and the management while terminating his service had not complied with the provisions of section 25-F of the Id Act. Before the Labour Commissioner conciliation proceeding was initiated. But for the adamant attitude of the management no fruitful result could be achieved. The Labour commissioner issued a failure report and the claimant filed the present petition before this tribunal. It has also been pleaded that the management Bank in clear violation of a settlement reached between the Bank workers union and the Bank management for absorption and regularization of casual workers fulfilling the requirement criteria in phased manner terminated his service. With such allegation the claimant has prayed for a direction to the management Bank to reinstate him into service with continuity and benefits including back wages from the date of termination and absorption against the permanent vacancy.

Notice being served the management Bank appeared and filed a written statement denying all the stand taken by the claimant. It has been specifically pleaded that the claimant was working only as a daily wager that too occasionally for the bank and was never under the regular employment. Hence, he has no locus standi or cause of action to raise this industrial dispute which is liable to be dismissed.

During the pendency of the proceeding the claimant filed a petition for a direction to the management to produce certain documents. The management also filed a petition to file additional Ws in the matter. By order dated 10thApril 2019 this tribunal allowed the petition filed by the claimant u/s 11(3) of the Id Act since the claimant admitted that the photocopies of the documents called for since has been filed by the management he is ready to admit those documents into evidence. After hearing the other petition filed by the management seeking

leave for filling additional WS, the tribunal found no reason of allowing the same and consequentially the prayer for additional WS was rejected. Thus, on the rival pleadings of the parties the following issues were framed for adjudication.

ISSUES

1. Whether the termination of the claimant by the management is illegal and against the provision of ID Act.
2. Whether the claim petition is not maintainable against the management inview of the various preliminary objections.
3. Whether the claimant is entitle for reinstatement into service with back wages as claimed.

The claimant examined himself as WW1 and proved several documents marked as WW1/M1 to WW1/M12. All these documents are the attested photocopies filed by the management during the pendency of this proceeding. Similarly the management examined the Senior Manager of the Bank as MW1 who also proved some documents marked in a series of MW1/A to MW1/B. The documents exhibited by the claimant include the undertaking taken by the Bank containing all the details for his absorption as a part time sweeper of the Bank, the documents in proof of his engagement in the Bank for the period 01.11.2007 to 11.07.2016. Similarly the document relied upon by the management Bank are the photocopies of the memorandum of settlement arrived between the Union of the Bank Employees and Management of the Indian Overseas Bank dated 17th February 2011 and the circular issued by the Bank Management containing the guidelines framed for absorption of temporary messengers/sweepers pursuant to settlement dated 17 02.2011. Both the parties made thorough cross examination of the witness examined by their adversaries.

At the outset of the argument the Ld. A/R for the claimant submitted that the Management Bank had engaged number of persons all over India as temporary sweepers and messengers. The All India Overseas Bank employee Union had raised an Industrial Dispute before the Labour Commissioner (Central) Chennai demanding absorption of those casual workers in the Bank as temporary and part time workers against permanent vacancies. The Management of the Bank and the Union had a detail deliberation and at the end settlement was arrived on 17.02.2011 wherein it was agreed that the absorption shall be made in phased manner subject to fulfillment of the requisite qualification and meeting the age criteria. The Management Bank accepted the same and issued a guideline to that effect on 23.03.2011. Though the claimant was having the requisite qualification and was under the required age group the manager of the Bank in a vindicative action terminated his service illegally. At the time of termination he had already completed work for 240 days in a calendar year and had acquired temporary status. He had also submitted undertaking in proper format as desired by the management. But the management ignoring all these things and without following the procedure of law laid u/s 25F of the Id Act terminated his service.

The Ltd. Counsel for the Management Bank in his reply argument submitted that the claimant was never under the payroll of the management and thus, the question of terminating his service doesn't arise. He was working as a casual worker intermittently on need basis and paid wage proportionate to the work done. For want of work his engagement was discontinued and that cannot be termed as termination of service.

FINDINGS

Issue No.1 and 2

It is not disputed that the claimant was working as a part time sweeper of the Bank w.e.f 1.11.2007 to 11.07.2016. On behalf of the claimant documents have been proved which clearly shows that during this period he was receiving remuneration by cash from the Bank. Not only that certain vouchers have been filed which proves that the claimant Sanjay Kumar was being paid travelling allowance for carrying letters and documents to the head office. These are not the documents of the claimant but the documents which are the attested copies of the originals produced by the management Bank. Not only that it is also not disputed that a bipartite settlement was made between the Management Bank and the said Bank employee union on 17.02.2011 at Chennai. The copy of the settlement has also been filed by the management Bank. As per the said settlement a temporary workman is he who has been appointed for a limited period of work which is of an essentially temporary nature or who is employed temporarily in the work of permanent nature. As per this settlement the temporary workman will be given preference while filling of the permanent vacancies provided he meets the criteria relating to qualification and age. As per this settlement the exercise of absorption was to be done on phased manner as one time measure and cannot be claimed as a precedent. The copy of the settlement filed by the Bank and exhibited by the claimant clearly shows that in the first phase the workers who have worked for more than 5 years in a Branch and completed 240 days or more continuously in a calendar year as on 15.11.2010 shall be absorbed in phase1 before 30.06.2011. Similarly persons who have worked as

casual/temporary messengers/sweeper for more than 3 years but less than 5 years in any of the Branch and completed 240 days or more in a calendar year as on 15.11.2010shall be absorbed in phase-2 once the absorption under phase-1 is completed subject to their submitting the required information/certificates. Similarly the persons working as casual/temporary messengers/ sweepers and have completed 240 days or more but have worked for less than 3 years as on 15.11.2010 shall be absorbed in phase-3. As per the settlement the persons eligible and desirous of the benefit had to submit an undertaking and declaration of their eligibility.

Not only that keeping the settlement in view the Bank Management on 23.03.2011 issued a circular to all the Branches Regional Offices and other officers containing a guideline for absorption of temporary messengers/sweepers as decided in the settlement. In the said circular strict instruction was imparted not to make any adhoc engagement of temporary messengers/ sweepers in any vacancy. This was issued pursuant to the settlement between the Management Bank and All India Overseas Bank employees union signed on 17.02.2011.

As seen from the record this claimant had worked for the Bank from 01.11.2007 to 11.07.2016 and had worked for more than 05 years continuously and within the prescribed age limit having the requisite qualification. Thus, he was entitled to be absorbed during the phase-1 of the absorption process. The undertaking given by him as per the requirement of the settlement and marked as exhibit WW1/1 clearly shows that the Branch Manager while forwarding his undertaking to the Head Office had appended a certificate as the Branch Head wherein it was mentioned that the claimant has been working in the Branch since 2008 and worked continuously for 240 days in a calendar year preceding to 15.11.2011. This document was confronted to MW1 who admitted the contents and the certificate given by the then Branch Manager. Thus, from this document it is admitted and proved that the claimant was working for the Bank since 01.04.2008 as a part time sweeper and had completed 240 days of work preceding to the date of settlement and was also meeting all the criteria's laid down for his absorption as a part time sweeper against permanent vacancy. But in this case the Bank management in gross violation of the terms of the settlement and its own circular referred above terminated the service of the claimant and took a false plea in the WS that the claimant was never a part time sweeper of the Bank but a daily wager engaged on need basis.

The Ltd. A/R for the management strenuously argued that the claimant since was engaged for intermittent work of the Bank without due process, his candidature cannot be considered for engagement as PTS. To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.** On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance since they were prevented from participating in the selection procedure describing the same as unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Now it is to be seen if the claimants of this proceeding were subjected to unfair labour practice or not. **"Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair Labour Practice. In this case the document filed by the workman and marked as WW1/4 clearly indicates that these claimants are working in the different branches of the Bank since the year 2010 and they qualify for consideration to the post of permanent PTS by virtue their age and qualification. The management in utter disregard of law, deprived them from participating in the selection process on a false plea that they are not temporary PTS and no application was submitted by them.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

"The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period.

In this case the oral and documentary evidence since proves the continuous service of the workman on temporary basis since 2008, the decisions of the Branch Manager in not allowing him to continue in work which was a condition precedent for his absorption against the post of Permanent PTS in the first phase of settlement is held to be illegal and unjustified. There is no evidence placed by the Bank to prove that the provisions of section 25F of the Id Act was complied at the time of his termination by giving him notice of termination, notice pay or termination compensation.

The witness examined on behalf of the Bank during cross examination has clearly admitted that the document marked as exhibit WW1/1 is a letter sent by the Branch Manager to the Head Office recommending regularization of the service of the claimant. No explanation has been offered as to why when his claim for absorption was pending before the Head Office and he was eligible in all respect for absorption, why his service was terminated. Thus, it is felt proper to give some direction to the Management Bank for his absorption in the post of Permanent PTS.

The Ltd. Counsel for the management at this juncture submitted that the claimant has only prayed for his reinstatement in the post where he was working with back wages. Thus, the tribunal should not issue any direction for his absorption. Though, under the scope of the claim petition this tribunal is to adjudicate about the legality and justifiability of the alleged termination and reinstatement prayed for, the Industrial adjudicator under the ID Act enjoys wide power for granting relief which would be proper in a given circumstance. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confine to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the workman has been victimized on account of the unfair labour practice by the Bank. The post for which he is aspirants is to be filled up in view of the bipartite settlement dated 17.02.2011. There is no evidence adduced by the Management that no post is vacant for the same. On the contrary the higher management of the Bank had issued direction to the Branches and Regional offices by its circular dated 23.03.2011 marked as MW1/B not to fill up those posts by adhoc appointment since those are to be filled up in phased manner by absorbing the persons working as casual workers. Keeping the situation in view it is felt proper to issue a direction to absorb and regularize the service of the claimant against the post of permanent PTS (Part time Sweeper) from the date he was illegally terminated, which would meet the ends of justice. This direction is specific in respect to this workman of the claim petition. These two issues are accordingly answered in favour of the claimant.

ISSUE NO.3

In view of the finding arrived while deciding issue No.1 and 2 it is held that the claimant is entitled to reinstatement into service with back wages from the date of termination ie. from 11.07.2016. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the claimant. it is held that the action of the Bank in terminating the service of the claimant w.e.f 11.07.2016 and thereby depriving him of his rights of absorption as per the bipartite settlement is illegal, unjustified and amounts to unfair labour practice since the claimant by working for more than 240 days in the calendar year preceding to the cutoff date given in the settlement and having fulfilled all other criteria is entitled for absorption. The Bank is hereby directed to reinstate the claimant

within 1 month from the date of publication of this award and pay him 50% of the Back wage as per the last drawn wage within one month hence. The Bank is further directed to regularize the service of the claimant against the post of permanent PTS of the Bank within 3 months from the date of publication of the award. The Back wages as directed above shall carry interest @9% from the date of accrual till the actual payment is made in case the Bank would fail to pay the same within the time stipulated in this order. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2021

का.आ. 620.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 58/2015) को प्रकाशित करती है।

[सं. एल-12011/46/2015-आईआर-(बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 14th September, 2021

S.O. 620.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/46/2015-IR (B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 58 of 2015

Between:-

The Member,
State Working Committee of UP Bank workers Org.
3/13, Mathura Nagar,
ALIGARH (U.P.)-202001

AND

The Circle Head,
Punjab National Bank, Birhana Road,
Kanpur (U.P)-

AWARD

This award arises in response to the reference stated in the schedule below as communicated in the letter No. L-12011/46/2015-IR(B-II) Government of India/Bharat Sarkar Ministry of Labour/ Shram Mantralaya dated 03/13. 08.2015

SCHEDULE

"Whether the action of the management of the Punjab National Bank, Kanpur declining payment of halting allowance to Shri K.K. Mishra posted in P.N.B , Fatehpur, is just and legal and if not, what relief the concerned workman is entitled to?"

2. After issuance of the reference, the claimant Workman submitted the claim statement with averments which may be summarised as follows:

Claimant in his claim statement stated that he joined Punjab National Bank on 18.08.1984 in the post of fourth grade employee . Claimant Shri K.K Mishra is also handicapped worker. In 2002, claimant was promoted to the cadre of clerk and was transferred and posted to the Branch of Fatehpur, PNB.

Claimant further stated that his posting to Fatehpur Branch PNB is against the provision of the guidelines issued by the Management of the Bank which state that the handicapped worker cannot be posted to another city after promotion. Though the claimant joined in Fatehpur Branch on request of claimant workman he was transferred to Birhana Road Branch, Kanpur with a direction that his transfer is temporary in nature and had to return to Fatehpur after 3 months though after 3 months he was transferred to different branches of Kanpur i.e Govind Nagar, Pandu Nagar, MG Road branch. While working in the mentioned branches more than 4 years were spent but during that time he had to travel to Fatehpur for drawing his salary. In such condition his posting would fall under the category of ON DEPUTATION or TEMPORARY TRANSFER.Hence as per the order of the Management of PNB claimant worked continuously from 06.11.2002 to 30.10.2006 for 1455 days far from Fatehpur in different branches on temporary posting. ON 26.10.2006 claimant was released from Kanpur and was re-posted to Fatehpur and claimant superannuated on 31.10.2006 from the Fatehpur, Branch. Claimant in his support to claim of halting allowance mentioned the Sub clause D of Clause G of Bipartite settlement which is as follows:-

"If a workman is temporarily transferred to a nearly place where batta is payable as per sub clause-B above and can return to his place every day, he will be entitled to travelling expenses as per entitlement under rules in addition to batta."

As per mentioned scenario claimant workman claimed that he is entitled for halting allowance for 1455 days as per Bipartite Settlement.

Claimant workman Shri K.K. Mishra first joined the PNB at Kanpur on 18.08.1984 as Group D staff later in the year 2002 on promotion to the clerical cadre the claimant was posted at PNB Fatehpur with violation of Banks Management.

3. The plea of the Management of the PNB in the written statement may be concisely stated as follows: Claimant Shri K.K. Mishra was initially appointed as Peon in the Punjab National Bank of Gandhi Nagar Branch, Kanpur and subsequently on promotion to clerical cadre he was given posting at Fatehpur Branch of the P.N.B

By his letter dated 04.05.2002 Shri K.K Mishra had unconditionally accepted the posting in clerical cadre in Fatehpur Branch of the PNB. Later, on request of claimant Shri K.K Mishra he was temporarily transferred and posted to Birhana Branch of the P.N.B . It is pleaded by the Bank that in the relieving letter dated 02-11-2002 he was informed that he would not be allowed T.A and D.A. It is pleaded that as per request of Shri Mishra he was allowed to work at Kanpur and was relieved back permanently on 26.10.2006 and on 31.10.2006 on attainment superannuation he was retired. It is pleaded by the management that the claimant's claim for halting allowance is barred by efflux of time.

For disposal of this reference proceeding the following points are to be answered:-

1. Whether claim of Shri K.K Mishra Clerk/ cashier of the Punjab National Bank for his duty rendered under the Birhana Road Branch for halting allowance is legally permissible;

2. Whether the claim for halting allowance was barred as raised after a long lapse of time.

It stands uncontroverted that Shri K.K Mishra was originally working as Peon of the PNB, Kanpur Branch and on promotion to clerical cadre he was posted in the Fatehpur Branch.

It is pleaded by the management of the P.N.B that there was no vacancy in the clerical cadre in that Branch for which Shri K.K Mishra had to be posted to Fatehpur Branch. It is found from the letter dated 02.11.2002 issued by the P.N.B Fatehpur Branch that Shri K.K Mishra on a temporary transfer for three months was asked to report before the Branch Manager, Birhana Road Kanpur. It is seen that the said temporary transfer was effected on his request with condition that no TA/DA etc would be allowed in his favour though this kind of conditional temporary transfer has not been referred anywhere in the bipartite settlement governing the service conditions of the subordinate Bank employees.

It appears Shri K. K. Mishra joined the branch at Kanpur and continued till his retirement in 2006. It remains uncontroverted that Shri K.K. Mishra was a person with disability. As a note of caution it can be stated here that the management of the PNB should have adjusted. Shri K.K Mishra in a branch of his choice honouring the circular Dated 5th May, 1988 and the circular dated 1st March 1988(at paper 7/5). Since Shri K.K Mishra after his posting at Fatehpur Branch was allowed to work in a branch at Kanpur on his request and choice he cannot be logically held to be entitled to get halting allowance his residential address at Fatehpur has not been furnished. After all, halting allowance is not intended to yield any profit. On legitimate expectation the claimant is not entitled to get halting allowance.

It may be a fact that the pay of Shri K.K. Mishra was drawn at Fatehpur Branch of the PNB but there is no concrete evidence that he had incurred expenses for getting the actual salary from the Fatehpur Branch of the P.N.B. In view of the scenario it is held that Shri K.K Mishra was not legally entitled to get halting allowance for 1449 days as claimed by him. The point is answered against the claimant workman.

Point No. II

It is seen that the claim of halting allowance relates to the period from 6.11.2002 to 26.10.2006 for 1449 days. Paper no. 11/6 dated 04.05.2002 purporting to be a document executed by Shri K.K. Mishra shows that he had unconditionally accepted the offer of promotion. This industrial dispute was issued to this Tribunal by letter No. L-12011/46/2015-IR (B-II) dated 03/13.08.20115 of the Ministry of Labour about nine years after the actual cause of action. Such stale claims if allowed to revive after a prolonged period of inaction are bound to have devastating harmful repercussion on the financial position of the industry. Though there is no prescribed period of Limitation for the Industrial disputes still in principle the industrial disputes raised after a prolonged delay are not legally sustainable. In other words the claim for halting allowance for years 2002, 2003, 2004, 2005 and part of 2006 as claimed by Shri K.K.Mishra (claimant) is barred by limitation. Answer to this point goes against the claimant workman.

Though the Bank had stipulated the condition of denial of T.A in favour of the claimant in the letter dated 02.11.2002 (paper No. 7/7) there was no logic for such stipulation. It may be recalled that the claimant was physically disabled and the management of the PNB should have taken a holistic approach towards the disabled employees adhering to the letters at paper 7/5. With pronouncement of such a view it cannot be stated that this Tribunal has gone beyond the scope of reference. In the result it is finally held that claimant K.K. Mishra is not entitled to get halting allowance but he was entitled to get other allowances incidental to his transfer.

This reference is answered accordingly. Parties are left to bear their respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2021

का.आ. 621.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, राष्ट्रीय रसायन और उर्वरक, मुंबई (महाराष्ट्र); मालिक, श्री दत्ता ट्रेवल्स, वडाला, मुंबई -(महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और उपाध्यक्ष, रायगढ़ श्रमिक एकता संघ, रायगढ़ मुंबई के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 मुंबई के पंचाट (संदर्भ संख्या CGIT-2/9 of 2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.09.2021 को प्राप्त हुआ था।

[सं. एल-42011/168/2017-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th September, 2021

S.O. 621.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/9 of 2018) of the Central Government Industrial Tribunal-cum-Labour Court -2 Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Rashtriya Chemical and Fertilirs, Mumbai- (Maharashtra); The Proprietor, Shree Datta Travels, Wadala, Mumbai -(Maharashtra) and The Vice President, Raigad Shramik Aekata Sangh, Raigad Mumbai which was received along with soft copy of the award by the Central Government on 10.09.2021.

[No. L-42011/168/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :SHYAM S. GARG, Presiding Officer

REFERENCE NO.CGIT-2/9 of 2018

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

1. RASHTRIYA CHEMICALS AND FERTILIZERS

The General Manager
Rashtriya Chemical and Fertilizers
Administrative Building
Chembur, Mumbai-400 074.

2. SHREE DATTA TRAVELS

The Proprietor
Shree Datta Travels
A/54, Amar Vikas Mandal
Plot No.10, Behind Municipal School,
Sewri X Road, Wadala
Mumbai 400 031.

AND

THEIR WORKMEN.

The Vice President
Raigad Shramik Aekata Sangh
House No.36, Shop No.1
At Post Navade
Raigad 410 208.

APPEARANCES:

FOR THE EMPLOYERS (1)	:	Mr. Medhas Nambiar Advocates i/b The Law Point.
EMPLOYER (2)	:	No appearance.
FOR THE UNION	:	Mr. G.R. Naik Advocate.

Mumbai, dated the 17th August, 2021

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42011/168/2017-IR (DU), dated 31.01.2018 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> *"Whether the action of the management of M s. Shree Datta Travels, Contractors, Employed in the establishment of RCF Ltd., Chembur, Mumbai in terminating the service of Shri Balasaheb Nanshidhar Shetty, Driver w.e.f. 4.8.2016 is just and proper? If not, what relief to the workman, concerned?"*

2. After receipt of the reference, both parties were served with notice. None appeared on behalf of the Union. Matter was adjourned on several dates.

3. Representative of Management No.1, Shri Prashant Borse appeared with their advocate and filed Vakalatnama. He also filed an application for dismissal of Reference stating that "Second Party i.e. Raigad Shramik Aekta Sangh has not filed the statement of claim. The matter is pending since March 2018. Further the second party also failed to appear before this Hon'ble Tribunal since many listing dates. Since second party has failed to take any further steps. It is submitted that present reference may be dismissed."

4. On perusal of record it appears that this Reference received by this Tribunal on 08.03.2018 and on behalf of Union Mr. G.R. Naik filed his Vakalatnama on 29.03.2021 and prayed for adjournment for filing Statement of Claim. Till today no statement of claim filed by the union or by the worker i.e. second party. Even notice issued for 11.08.2021 to Union. After receiving notice neither workman nor union Representative appeared.

5. On 13.08.2021, Advocate for the union filed application (Ex-7) praying for time for sending legal notice to Union before withdrawing appearance from the reference. Matter was adjourned till 17.08.2021. On 17.08.2021, Advocate for union appeared and filed application enclosing notice sent to union. It shows that facts mentioned in Ex-6 appear to be true. It also appears that union and workman are not interested to proceed with this Reference. So this reference is disposed of for want of prosecution. Hence the order:

ORDER

Reference answered in negative against the workman. Workman is not entitled to any relief.

SHYAM S. GARG, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2021

का.आ. 622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्यकारी निदेशक, राष्ट्रीय रसायन और उर्वरक, मुंबई- (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, मुंबई श्रमिक संघ, भांडुप (डब्ल्यू), मुंबई के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 मुंबई के पंचाट (संदर्भ संख्या CGIT-2/49 of 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.09.2021 को प्राप्त हुआ था।

[सं. एल-42011/129/2019- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th September, 2021

S.O. 622.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/ 49 of 2019) of the Central Government Industrial Tribunal-cum-Labour Court -2 Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Director, Rashtriya Chemical and Fertilizers, Mumbai- (Maharashtra) and The President, Mumbai Shramik Sangh, Bhandup (W), Mumbai which was received along with soft copy of the award by the Central Government on 10.09.2021.

[No. L-42011/129/2019-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : SHYAM S. GARG, Presiding Officer

REFERENCE NO.CGIT-2/49 of 2019

EMPLOYERS IN RELATION TO THE MANAGEMENT OF RASHTRIYA CHEMICALS AND FERTILIZERS

The Executive Director
Rashtriya Chemical and Fertilizers
Administrative Building
Chembur, Mumbai-400 074.

AND

THEIR WORKMEN

The President
Mumbai Shramik Sangh
Sangarsh Quarry Road
Bhandup (W)
Mumbai- 400 078

APPEARANCES:

FOR THE EMPLOYERS : Mr. S. Alva, Advocate.

FOR THE UNION : No Appearance.

Mumbai, dated the 16th August, 2021

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42011/129/2019-IR (DU), dated 18.09.2019 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M s. Rashtriya Chemicals & Fertilizers Ltd. for not rectifying the date of birth in respect of three workmen in accordance with school leaving certificates in the present dispute is legal and justified? if not, what relief the workmen are entitled to?"

2. After receipt of the reference, both parties were served with notice. None appeared on behalf of the Union. Matter was adjourned on several dates.

3. Representative of Management Shri Prashant Borse appeared with their advocate and filed Memorandum of Appearance. He also filed an application for dismissal of Reference stating that the Second Party i.e. Mumbai Shramik Sangh has not filed the statement of claim despite many opportunities. Therefore they prayed that the Reference be disposed of for non-filing of Statement of Claim

4. On perusal of the record and discussions, my humble opinion is that, no fruitful purpose is served by keeping this Reference pending. It also appears that union and workman are not interested to proceed with this Reference. So this reference is dismissed for default. Hence the order:

ORDER

Reference answered in negative against the Union/ workmen. Union/ Workmen are not entitled to any relief.

SHYAM S. GARG, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2021

का.आ. 623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र); संरक्षण सहायक, दौलताबाद किला, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री श्रीहरि गोपीनाथ तुपे, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय-1, औरंगाबाद के पंचाट (संदर्भ संख्या 30/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.09.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th September, 2021

S.O. 623.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2018) of the Labour Court-1, Aurangabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of India, Aurangabad- (Maharashtra); The conservation Assistant, Daulatabad Fort, Archaeological Survey of India, Aurangabad- (Maharashtra) and Shri Shrihari Gopinath Tupe, worker which was received along with soft copy of the award by the Central Government on 15.09.2021.

[No. L-42025/07/2021-IR (DU)]

D. K .HIMANSHU, Under Secy.

ANNEXURE

IN THE LABOUR COURT-I AT AURANGABAD

(Presided over by M.Y. Amrutkar)

Ex. No. O:

REFERENCE (IDA) NO. 30/2018

CNR NO.MH-LC- 20-002737-2016

Between :

1. The Superintending Archaeologist,
   Archaeological Survey of India,
   Aurangabad Circle,
   1st Floor, D.R .BAMO Campus,
   Near Munciple Hospital Nandavan Colony,
   Aurangabad.

2. The conservation Assistant,
   Daulatabad Fort,
   Archaeological Survey of India,
   Tq. Dist. Aurangabad ... First Party

AND

Shrihari Gopinath Tupe,
Mujeeb Colony, Daulatabad,
Dist. Aurangabad ... Second Party

Claim:- Under Section 2A (2) of I.D.Act, 1947

Advocates:

Mr. U.V. Khonde, for the second Party.

Mr. D.G. Nagode for the First party.

AWARD

(Dtd. 25.08.2021)

1 The second party suo-moto approached before this Court on lapses of 45 days from the date of conciliation proceeding under Section 2A (2) of the Industrial Disputes Act, 1947 for reinstatement in service with continuity and full back-wages w.e.f. 13/12/2010. So also the Deputy Director of Central Govt. by its order dtd. 02/01/2019 has also referred the Reference for its adjudication as mentioned in Schedule.

2. The second party worked as a labour with first party since 2002 for 9 years. The second party had completed 240 days in every calendar year. On 13.12.2010, the first party discontinued the service of the second party without any reason. The second party submitted that the work allotted to him is perennial in nature. He used to clean for premises, cutting grass and maintain entire fort. The second party submitted that first party never issued any charge sheet, memo or notice to him. The termination order is arbitrary, illegal and unfair labour practice. The first party did not offer retrenchment compensation, notice, notice pay to the second party at the time of termination. The first party did not publish seniority list as per Rule 80 of I.D.Act, and not followed the of `last come, first go`. The second party issued demand notice to the first party, however, the first party did not reply. Hence, the second party approached to Central Labour Commissioner for interference. The first party appeared before the Central Labour Commissioner and put their Say before the authority. The authority tried to settle the matter but first party did not show any willingness to reinstate the second party. Therefore, the Deputy Director, Govt. Of India, Ministry of Labour, New Delhi, referred the matter before this Court for adjudication. The second party lastly prayed that he may be reinstated in service with continuity of service and back wages.

3 The first party no. 1 & 2 filed their Written Statement at Ex.C-3. The first party submitted that the Reference itself is not maintainable on the ground that Industrial Disputes Act, is not applicable to first party. The primary object of the Archaeological Survey of India (A.S.I.) is implementation of the "Ancient Monuments and Archaeological sites and Remains Act, 1958 and "Antiquities Arts Treasurer Act, 1972 on behalf of the Union in fulfillment of the constitutional responsibilities for maintenance of cultural property and monuments. Thus, the activities of first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party do not come under the definition of Industry for the purpose of

Industrial Disputes Act, 1947. The first party submitted that second party was working as a casual labour from 2002 at Daulatabad Fort and he was engaged on the basis of as and when work available for cleaning, sweeping, watch and ward removal of rank vegetation etc. The first party submitted that as the activities of first party does not constitute an `Industry` for the purpose of Industrial Disputes Act, 1947, hence, there is no need to comply the provisions under I.D.Act,1947. Therefore, the Reference is not maintainable and there is no question of reinstatement of service to the second party. Hence, the Reference may kindly be answered in negative.

4 After rival pleadings of the parties, following issues are framed by my learned Predecessor at Ex.O:03, I have recorded my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1.	Whether the second party prove that he is `workman` as defined U/s. 2 (s) of the I.D.Act ?	In the affirmative
2.	Whether the second party prove that the first party is an `industry` ?	In the affirmative
3.	Whether the second party-workman prove that he has completed more than 240 days continuous service in each year before termination with first party ?	In the negative
4.	Whether the second party-workman prove that termination order dated 13/12/2010 is illegal and liable to be set aside ?	In the negative
5.	Whether the second party-workman prove that the first party has committed unfair labour practice ?	In the negative
6.	Whether the second party-workman prove that he is entitled for reinstatement in service with continuity along with back wages ?	In the negative
7.	What Award ?	The reference is answered in negative.

Reasons

As to issue No. 01:

5. The first party pleaded that the second party was not come under the definition of workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The first party further pleaded that second party was working as a casual labour with them.

6. As per Industrial Employment (Standing Orders) Act 1946, the workman shall classified as (a) Permanent workman (b) Probationer (c) Badlies or substitutes (d) Temporary workman (e) Casual workman (f) Apprentices. Therefore, I have no hesitation to come to the conclusion that the second party was come under the definition within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. Therefore, I answer Issue no. 01 in affirmative.

As to issue No. 02.

7. The first party came before the Court with a defense that Archaeological Survey Of India (ASI) did not fall within the meaning of `industry` as defined under section 2 (j) of the Industrial Disputes Act, 1947. The learned Advocate for the second party argued that maintenance was carried out through revenue generated from cess of tickets of visitors and tourists at various sites and monuments maintained by A.S.I. and therefore, it was an organized commercial activities of A.S.I. The work carried out by the second party was of perennial nature of work and it cannot be said to be sole sovereign function of Government of India.

8. The learned Counsel for the second party relied on following authorities:

(1) Chief Conservator of Forest Vs. Jagannath Maruti Kondhare 1996 (72) FLR 840 (SC)

(2) General Manager Telecom Vs. S. Shrinivasa Rao 1998 (78) FLR 143 (SC)

(3) Coir Board, Ernakulam Vs. Indira Devi P.S. (SC) 1998 (78) FLR 847 (SC)

(4) Coir Board, Ernakulam Kerala State & Anr. Vs. Indira Devi P.S. 2000 (1) SCC 224 (SC)

(5) State Bank of Indore Vs. Rashtriya Mazdoor Sena and Ors 2003 (98) FLR 1143 (SC)

9 I relied on the Judgment of Supreme Court in the case of **Benglore Water Supply Sewerage of Boards etc Vs. A. Rajappa and others (1978) 2 SSC 213.**

``Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad or food), prima facie, there is an 'industry' in that enterprise.``

10. In **Union of India Thru Its Secretary Vs. Surendra Singh Rashtriya** delivered on 19th March, 2019, the Hon'ble Allahabad High Court held that:

"From the nature of the work done by the respondent-workmen it cannot be said that the same is of a sovereign nature, therefore, I have no difficulty in holding that the Garden/Horticulture Department of the ASI is an "Industry" as defined in Section 2 (j) of the Act, 1947."

11. In the case in hand, the nature of work of second party-workman, it cannot be said that the same is of sovereign nature, therefore, I have no hesitation to accept that the department of Tourism of Culture of ASI is an 'industry' defined in Section 2 (j) of the I.D.Act. Therefore, I answered issue no. 2 in affirmative.

As to issue No. 03:-

12. The second party came with the case that he had worked more than 240 days in a calendar year. Therefore, he cannot be retrenched without following the provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947.

13. The learned Counsel for the second party relied on the following authorities:-

(1) **Jasmer Singh Vs. State of Haryana and Anr., reported in 2015 (144) FLR 837 (SC).**

(2) **Surendra Kumar Verma etc Vs. The Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi and anr. Reported in 1980 (41) FLR 351 (SC).**

(3) Prashant S/o. Ashokrao Salunke Vs. The Nagpur District Central Co-operative Bank Ltd., reported in 2007 (4) ALL MR 597 (Bombay High Court, Nagpur Bench).

(4) Marathwada Krishi Vidyapith Magasvargiya Sevak Kalyankari Sangh Vs. State of Maharashtra & Ors., reported in 2000 (11) LJ Soft. 43.

14. The Apex Courts held in aforesaid authorities as "the second party who was on daily wages retrenched from service may not have any legal right to be regularised or made permanent in service, but his termination being retrenchment for any reason whatsoever, non-compliance of mandatory provisions of I.D.Act must result into termination being declared as illegal, the provisions of Section 25-F is imperative in character".

The second party workman examined himself by way of filing evidence affidavit vide Ex.U-8. He deposed on oath that he has completed 240 days continuous service in a calendar year. During the cross examination, he deposed that in support of his pleadings, he filed documentary evidence before this Court. The second party further deposed that he has no documentary evidence to show that he worked with first party. Perused record, I found that the second party produced photocopies of muster roll from 1993 to 2006 and documents demanded through R.T.I. from the first party vide Exh. U-14 filed in Ref. (IDA) No. 27/2018, but the said documents neither exhibited nor proved before this Court. The second party workman further deposed that he filed Writ Petition before the Hon'ble High Court of Bombay Judicature at Aurangabad for permanency, in which the Hon'ble High Court directed to first party that in season as and when the work is available to those who are placed senior in the muster roll. However, the case pending before this Court is not related to permanency. The management witness admitted in the cross examination that they maintained seniority list. But second party has not made any application and asked to first party to produce same muster roll.

15. However, it is settled position of law that initial burden lies on workman whether he worked for 240 days continuously with the first party or not. From the facts and circumstances of the case, I have not found that second party proves that he has completed 240 days continuous service during any calendar year. Therefore, there is no question to follow due process of law for compliance of provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947. Therefore, I have no hesitation to conclude that the second party is not illegally terminated, therefore, I have answered issues no. 03, 04 & 05 in negative.

As to issue No. 06 & 07

16. As this Court already concluded that the second party was not illegally terminated, therefore, the second party-workman is not entitled for reinstatement in service with continuity of service and full back-wages, therefore, I answer issue no. 06 in negative and to answer issue no. 07, I proceed to pass following Award.

AWARD

(1) The Reference is answered in negative.

(2) No order as to costs.

(3) The copy of the Award be sent for its publication to the Appropriate Government i.e.Deputy Director, Govt. Of India, Ministry of Labour, New Delhi.

M. Y. AMRUTKAR, Presiding Officer & Judge

नई दिल्ली, 15 सितम्बर, 2021

का.आ. 624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र); संरक्षण सहायक, दौलताबाद किला, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रंजीत विष्णु कीर्तिकर, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय-1, औरंगाबाद के पंचाट (संदर्भ संख्या 28/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.09.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th September, 2021

S.O. 624.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2018) of the Labour Court-1, Aurangabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of India, Aurangabad- (Maharashtra); The conservation Assistant, Daulatabad Fort, Archaeological Survey of India, Aurangabad- (Maharashtra) and Shri Ranjeet Vishnu Kirtikar, worker which was received along with soft copy of the award by the Central Government on 15.09.2021.

[No. L-42025/07/2021-IR (DU)]

D. K .HIMANSHU, Under Secy.

ANNEXURE

IN THE LABOUR COURT-I AT AURANGABAD

(Presided over by M.Y. Amrutkar)

Ex. No.O:

REFERENCE (IDA) NO. 28/2018

CNR NO.MH-LC- 20-002735-2016

Between :

1. The Superintending Archaeologist,
Archaeological Survey of India,
Aurangabad Circle,
1st Floor, D.R.BAMO Campus,

Near Munciple Hospital Nandavan Colony,
Aurangabad.

2. The conservation Assistant,
Daulatabad Fort,
Archaeological Survey of India,
Tq. Dist. Aurangabad. ... First Party

AND

Ranjeet Vishnu Kirtikar,
Age: 35 Years, Occ: Nil,
At Post Rajwada (Daulatabad)
Post. Daulatabad Post. Daulatabad,
Tq. Dist. Aurangabad ... Second Party

Claim:- Under Section 2A (2) of I.D.Act, 1947

Advocates:

Mr. U.V. Khonde, for the second Party.

Mr. D.G. Nagode for the First party.

AWARD

(Dtd. 25.08.2021)

1 The second party suo-moto approached before this Court on lapses of 45 days from the date of conciliation proceeding under Section 2A (2) of the Industrial Disputes Act, 1947 for reinstatement in service with continuity and full back-wages w.e.f. 13/12/2010. So also the Deputy Director of Central Govt. by its order dtd. 02/01/2019 has also referred the Reference for its adjudication as mentioned in Schedule.

2. The second party worked as a labour with first party since 2004 for 7 years. The second party had completed 240 days in every calendar year. On 13.12.2010, the first party discontinued the service of the second party without any reason. The second party submitted that the work allotted to him is perennial in nature. He used to clean for premises, cutting grass and maintain entire fort. The second party submitted that first party never issued any charge sheet, memo or notice to him. The termination order is arbitrary, illegal and unfair labour practice. The first party did not offer retrenchment compensation, notice, notice pay to the second party at the time of termination. The first party did not publish seniority list as per Rule 80 of I.D.Act, and not followed the of 'last come, first go'. The second party issued demand notice to the first party, however, the first party did not reply. Hence, the second party approached to Central Labour Commissioner for interference. The first party appeared before the Central Labour Commissioner and put their Say before the authority. The authority tried to settle the matter but first party did not show any willingness to reinstate the second party. Therefore, the Deputy Director, Govt. Of India, Ministry of Labour, New Delhi, referred the matter before this Court for adjudication. The second party lastly prayed that he may be reinstated in service with continuity of service and back wages.

3 The first party no. 1 & 2 filed their Written Statement at Ex.C-3. The first party submitted that the Reference itself is not maintainable on the ground that Industrial Disputes Act, is not applicable to first party. The primary object of the Archaeological Survey of India (A.S.I.) is implementation of the "Ancient Monuments and Archaeological sites and Remains Act, 1958 and "Antiquities Arts Treasurer Act, 1972 on behalf of the Union in fulfillment of the constitutional responsibilities for maintenance of cultural property and monuments. Thus, the activities of first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party submitted that second party was working as a casual labour from 2004 at Daulatabad Fort and he was engaged on the basis of as and when work available for cleaning, sweeping, watch and ward removal of rank vegetation etc. The first party submitted that as the activities of first party does not constitute an 'Industry' for the purpose of Industrial Disputes Act, 1947, hence, there is no need to comply the provisions under I.D.Act,1947. Therefore, the Reference is not maintainable and there is no question of reinstatement of service to the second party. Hence, the Reference may kindly be answered in negative.

4 After rival pleadings of the parties, following issues are framed by my learned Predecessor at Ex.O:03, I have recorded my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1.	Whether the second party prove that he is `workman` as defined U/s. 2 (s) of the I.D.Act ?	In the affirmative
2.	Whether the second party prove that the first party is an `industry` ?	In the affirmative
3.	Whether the second party-workman prove that he has completed more than 240 days continuous service in each year before termination with first party ?	In the negative
4.	Whether the second party-workman prove that termination order dated 13/12/2010 is illegal and liable to be set aside ?	In the negative
5.	Whether the second party-workman prove that the first party has committed unfair labour practice ?	In the negative
6.	Whether the second party-workman prove that he is entitled for reinstatement in service with continuity along with back wages ?	In the negative
7.	Wht Award ?	The reference is answered in negative.

Reasons

As to issue No. 01:

5. The first party pleaded that the second party was not come under the definition of workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The first party further pleaded that second party was working as a casual labour with them.

6. As per Industrial Employment (Standing Orders) Act 1946, the workman shall classified as (a) Permanent workman (b) Probationer (c) Badlies or substitutes (d) Temporary workman (e) Casual workman (f) Apprentices. Therefore, I have no hesitation to come to the conclusion that the second party was come under the definition within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. Therefore, I answer Issue no. 01 in affirmative.

As to issue No. 02.

7. The first party came before the Court with a defense that Archaeological Survey Of India (ASI) did not fall within the meaning of `industry` as defined under section 2 (j) of the Industrial Disputes Act, 1947. The learned Advocate for the second party argued that maintenance was carried out through revenue generated from cess of tickets of visitors and tourists at various sites and monuments maintained by A.S.I. and therefore, it was an organized commercial activities of A.S.I. The work carried out by the second party was of perennial nature of work and it cannot be said to be sole sovereign function of Government of India.

8. The learned Counsel for the second party relied on following authorities:

(1) **Chief Conservator of Forest Vs. Jagannath Maruti Kondhare 1996 (72) FLR 840 (SC)**

(2) General Manager Telecom Vs. S. Shrinivasa Rao 1998 (78) FLR 143 (SC)

(3) Coir Board, Ernakulam Vs. Indira Devi P.S. (SC) 1998 (78) FLR 847 (SC)

(4) Coir Board, Ernakulam Kerala State & Anr. Vs. Indira Devi P.S. 2000 (1) SCC 224 (SC)

(5) State Bank of Indore Vs. Rashtriya Mazdoor Sena and Ors 2003 (98) FLR 1143 (SC)

9. I relied on the Judgment of Supreme Court in the case of **Benglore Water Supply Sewerage of Boards etc Vs. A. Rajappa and others (1978) 2 SSC 213.**

> ``Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad or food), prima facie, there is an 'industry' in that enterprise.``

10. In **Union of India Thru Its Secretary Vs. Surendra Singh Rashtriya** delivered on 19th March, 2019, the Hon`ble Allahabad High Court held that:

"From the nature of the work done by the respondent-workmen it cannot be said that the same is of a sovereign nature, therefore, I have no difficulty in holding that the Garden/Horticulture Department of the ASI is an "Industry" as defined in Section 2 (j) of the Act, 1947."

11. In the case in hand, the nature of work of second party-workman, it cannot be said that the same is of sovereign nature, therefore, I have no hesitation to accept that the department of Tourism of Culture of ASI is an `industry` defined in Section 2 (j) of the I.D.Act. Therefore, I answered issue no. 2 in affirmative.

As to issue No. 03:-

12. The second party came with the case that he had worked more than 240 days in a calendar year. Therefore, he cannot be retrenched without following the provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947.

13. The learned Counsel for the second party relied on the following authorities:-

(1) **Jasmer Singh Vs. State of Haryana and Anr., reported in 2015 (144) FLR 837 (SC).**

(2) **Surendra Kumar Verma etc Vs. The Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi and anr. Reported in 1980 (41) FLR 351 (SC).**

(3) Prashant S/o. Ashokrao Salunke Vs. The Nagpur District Central Co-operative Bank Ltd., reported in 2007 (4) ALL MR 597 (Bombay High Court, Nagpur Bench).

(4) Marathwada Krishi Vidyapith Magasvargiya Sevak Kalyankari Sangh Vs. State of Maharashtra & Ors., reported in 2000 (11) LJ Soft. 43.

14. The Apex Courts held in aforesaid authorities as "the second party who was on daily wages retrenched from service may not have any legal right to be regularised or made permanent in service, but his termination being retrenchment for any reason whatsoever, non-compliance of mandatory provisions of I.D.Act must result into termination being declared as illegal, the provisions of Section 25-F is imperative in character".

The second party workman examined himself by way of filing evidence affidavit vide Ex.U-6. He deposed on oath that he has completed 240 days continuous service in a calendar year. During the cross examination, he deposed that in support of his pleadings, he filed documentary evidence before this Court. The second party further deposed that he has no documentary evidence to show that he worked with first party. Perused record, I found that the second party produced photocopies of muster roll from 1993 to 2006 and documents demanded through R.T.I. from the first party vide Exh. U-14, filed in Ref.(IDA) No. 27/2018, but the said documents neither exhibited nor proved before this Court. The second party workman further deposed that he filed Writ Petition before the Hon`ble High Court of Bombay Judicature at Aurangabad for permanency, in which the Hon`ble High Court directed to first party that in season as and when the work is available to those who are placed senior in the muster roll. However, the case pending before this Court is not related to permanency. The management witness admitted in the cross examination that they maintained seniority list. But second party has not made any application and asked to first party to produce same muster roll.

15. However, it is settled position of law that initial burden lies on workman whether he worked for 240 days continuously with the first party or not. From the facts and circumstances of the case, I have not found that second party proves that he has completed 240 days continuous service during any calendar year. Therefore, there is no question to follow due process of law for compliance of provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947. Therefore, I have no hesitation to conclude that the second party is not illegally terminated, therefore, I have answered issues no. 03, 04 & 05 in negative.

As to issue No. 06 & 07

16. As this Court already concluded that the second party was not illegally terminated, therefore, the second party-workman is not entitled for reinstatement in service with continuity of service and full back-wages, therefore, I answer issue no. 06 in negative and to answer issue no. 07, I proceed to pass following Award.

AWARD

(1) The Reference is answered in negative.

(2) No order as to costs.

(3) The copy of the Award be sent for its publication to the Appropriate Government i.e. Deputy Director, Govt. Of India, Ministry of Labour, New Delhi.

M.Y. AMRUTKAR, Presiding Officer & Judge

नई दिल्ली, 15 सितम्बर, 2021

का.आ. 625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र); संरक्षण सहायक, दौलताबाद किला, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री उबेद खान वहीद खान, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय-1, औरंगाबाद के पंचाट (संदर्भ संख्या 27/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.09.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th September, 2021

S.O. 625.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2018) of the Labour Court-1, Aurangabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of India, Aurangabad -(Maharashtra); The conservation Assistant, Daulatabad Fort, Archaeological Survey of India, Aurangabad -(Maharashtra) and Shri Ubed Khan Wahed Khan, worker which was received along with soft copy of the award by the Central Government on 15.09.2021.

[No. L-42025/07/2021-IR (DU)]

D. K .HIMANSHU, Under Secy.

ANNEXURE

IN THE LABOUR COURT-I AT AURANGABAD

(Presided over by M.Y.Amrutkar)

Ex. No. O:

REFERENCE (IDA) NO. 27/2018

CNR NO.MH-LC- 20-002734-2016

Between :

1. The Superintending Archaeologist,
   Archaeological Survey of India,
   Aurangabad Circle,
   1st Floor, D.R. BAMO Campus,
   Near Munciple Hospital Nandavan Colony,
   Aurangabad.

2. The conservation Assistant,
   Daulatabad Fort,
   Archaeological Survey of India,
   Tq. Dist. Aurangabad ... First Party

AND

Ubed Khan Wahed Khan,
Abdi Mandi, Post. Daulatabad,
Aurangabad ... Second Party

Claim:- Under Section 2A (2) of I.D.Act, 1947

Advocates:

Mr. U.V. Khonde, for the second Party

Mr. D.G. Nagode for the First party

AWARD

(Dtd. 25.08.2021)

1. The second party suo-moto approached before this Court on lapses of 45 days from the date of conciliation proceeding under Section 2A (2) of the Industrial Disputes Act, 1947 for reinstatement in service with continuity and full back-wages w.e.f. 13/12/2010. So also the Deputy Director of Central Govt. by its order dtd. 02/01/2019 has also referred the Reference for its adjudication as mentioned in Schedule.

2. The second party worked as a labour with first party since 2002 for 9 years. The second party had completed 240 days in every calendar year. On 13.12.2010, the first party discontinued the service of the second party without any reason. The second party submitted that the work allotted to him is perennial in nature. He used to clean for premises, cutting grass and maintain entire fort. The second party submitted that first party never issued any charge sheet, memo or notice to him. The termination order is arbitrary, illegal and unfair labour practice. The first party did not offer retrenchment compensation, notice, notice pay to the second party at the time of termination. The first party did not publish seniority list as per Rule 80 of I.D.Act, and not followed the of `last come, first go`. The second party issued demand notice to the first party, however, the first party did not reply. Hence, the second party approached to Central Labour Commissioner for interference. The first party appeared before the Central Labour Commissioner and put their Say before the authority. The authority tried to settle the matter but first party did not show any willingness to reinstate the second party. Therefore, the Deputy Director, Govt. Of India, Ministry of Labour, New Delhi, referred the matter before this Court for adjudication. The second party lastly prayed that he may be reinstated in service with continuity of service and back wages.

3. The first party no. 1 & 2 filed their Written Statement at Ex.C-4. The first party submitted that the Reference itself is not maintainable on the ground that Industrial Disputes Act, is not applicable to first party. The primary object of the Archaeological Survey of India (A.S.I.) is implementation of the "Ancient Monuments and Archaeological sites and Remains Act, 1958 and "Antiquities Arts Treasurer Act, 1972 on behalf of the Union in fulfillment of the constitutional responsibilities for maintenance of cultural property and monuments. Thus, the activities of first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party submitted that second party was working as a casual labour from 2002 at Daulatabad Fort and he was engaged on the basis of as and when work available for cleaning, sweeping, watch and ward removal of rank vegetation etc. The first party submitted that as the activities of first party does not constitute an `Industry` for the purpose of Industrial Disputes Act, 1947, hence, there is no need to comply the provisions under I.D.Act,1947. Therefore, the Reference is not maintainable and there is no question of reinstatement of service to the second party. Hence, the Reference may kindly be answered in negative.

4. After rival pleadings of the parties, following issues are framed by my learned Predecessor at Ex.O:03, I have recorded my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1.	Whether the second party prove that he is `workman` as defined U/s. 2 (s) of the I.D.Act ?	In the affirmative
2.	Whether the second party prove that the first party is an `industry` ?	In the affirmative
3.	Whether the second party-workman prove that he has completed more than 240 days continuous service in each year before termination with first party ?	In the negative
4.	Whether the second party-workman prove that termination order dated 13/12/2010 is illegal and liable to be set aside ?	In the negative
5.	Whether the second party-workman prove that the first party has committed unfair labour practice ?	In the negative
6.	Whether the second party-workman prove that he is entitled for reinstatement in service with continuity along with back wages ?	In the negative
7.	What Award ?	The reference is answered in negative.

REASONS

As to issue No. 01:

5 The first party pleaded that the second party was not come under the definition of workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The first party further pleaded that second party was working as a casual labour with them.

6. As per Industrial Employment (Standing Orders) Act 1946, the workman shall classified as (a) Permanent workman (b) Probationer (c) Badlies or substitutes (d) Temporary workman (e) Casual workman (f) Apprentices. Therefore, I have no hesitation to come to the conclusion that the second party was come under the definition within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. Therefore, I answer Issue no. 01 in affirmative.

As to issue No. 02.

7. The first party came before the Court with a defense that Archaeological Survey Of India (ASI) did not fall within the meaning of `industry` as defined under section 2 (j) of the Industrial Disputes Act, 1947. The learned Advocate for the second party argued that maintenance was carried out through revenue generated from cess of tickets of visitors and tourists at various sites and monuments maintained by A.S.I. and therefore, it was an organized commercial activities of A.S.I. The work carried out by the second party was of perennial nature of work and it cannot be said to be sole sovereign function of Government of India.

8. The learned Counsel for the second party relied on following authorities:

(1) **Chief Conservator of Forest Vs. Jagannath Maruti Kondhare 1996 (72) FLR 840 (SC)**

(2) General Manager Telecom Vs. S. Shrinivasa Rao 1998 (78) FLR 143 (SC)

(3) Coir Board, Ernakulam Vs. Indira Devi P.S. (SC) 1998 (78) FLR 847 (SC)

(4) Coir Board, Ernakulam Kerala State & Anr. Vs. Indira Devi P.S. 2000 (1) SCC 224 (SC)

(5) State Bank of Indore Vs. Rashtriya Mazdoor Sena and Ors 2003 (98) FLR 1143 (SC)

9. I relied on the Judgment of Supreme Court in the case of **Benglore Water Supply Sewerage of Boards etc Vs. A. Rajappa and others (1978) 2 SSC 213.**

> ``Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad or food), prima facie, there is an 'industry' in that enterprise.``

10. In **Union of India Thru Its Secretary Vs. Surendra Singh Rashtriya** delivered on 19th March, 2019, the Hon'ble Allahabad High Court held that:

> *"From the nature of the work done by the respondent-workmen it cannot be said that the same is of a sovereign nature, therefore, I have no difficulty in holding that the Garden/Horticulture Department of the ASI is an "Industry" as defined in Section 2 (j) of the Act, 1947."*

11. In the case in hand, the nature of work of second party-workman, it cannot be said that the same is of sovereign nature, therefore, I have no hesitation to accept that the department of Tourism of Culture of ASI is an `industry` defined in Section 2 (j) of the I.D.Act. Therefore, I answered issue no. 2 in affirmative.

As to issue No. 03:-

12. The second party came with the case that he had worked more than 240 days in a calendar year. Therefore, he cannot be retrenched without following the provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947.

13. The learned Counsel for the second party relied on the following authorities:-

(1) **Jasmer Singh Vs. State of Haryana and Anr., reported in 2015 (144) FLR 837 (SC).**

(2) **Surendra Kumar Verma etc Vs. The Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi and anr. Reported in 1980 (41) FLR 351 (SC).**

(3) Prashant S/o. Ashokrao Salunke Vs. The Nagpur District Central Co-operative Bank Ltd., reported in 2007 (4) ALL MR 597 (Bombay High Court, Nagpur Bench).

(4) Marathwada Krishi Vidyapith Magasvargiya Sevak Kalyankari Sangh Vs. State of Maharashtra & Ors., reported in 2000 (11) LJ Soft. 43.

14. The Apex Courts held in aforesaid authorities as "the second party who was on daily wages retrenched from service may not have any legal right to be regularised or made permanent in service, but his termination being retrenchment for any reason whatsoever, non-compliance of mandatory provisions of I.D.Act must result into termination being declared as illegal, the provisions of Section 25-F is imperative in character".

The second party workman examined himself by way of filing evidence affidavit vide Ex.U-6. He deposed on oath that he has completed 240 days continuous service in a calendar year. During the cross examination, he deposed that in support of his pleadings, he filed documentary evidence before this Court. The second party further deposed that he has no documentary evidence to show that he worked with first party. Perused record, I found that the second party produced photocopies of muster roll from 1993 to 2006 and documents demanded through R.T.I. from the first party vide Exh. U-14 but the said documents neither exhibited nor proved before this Court. The second party workman further deposed that he filed Writ Petition before the Hon'ble High Court of Bombay Judicature at Aurangabad for permanency, in which the Hon'ble High Court directed to first party that in season as and when the work is available to those who are placed senior in the muster roll. However, the case pending before this Court is not related to permanency. The management witness admitted in the cross examination that they maintained seniority list. But second party has not made any application and asked to first party to produce same muster roll.

15. However, it is settled position of law that initial burden lies on workman whether he worked for 240 days continuously with the first party or not. From the facts and circumstances of the case, I have not found that second party proves that he has completed 240 days continuous service during any calendar year. Therefore, there is no question to follow due process of law for compliance of provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947. Therefore, I have no hesitation to conclude that the second party is not illegally terminated, therefore, I have answered issues no. 03, 04 & 05 in negative.

As to issue No. 06 & 07

16 As this Court already concluded that the second party was not illegally terminated, therefore, the second party-workman is not entitled for reinstatement in service with continuity of service and full back-wages, therefore, I answer issue no. 06 in negative and to answer issue no. 07, I proceed to pass following Award.

AWARD

(1) The Reference is answered in negative

(2) No order as to costs.

(3) The copy of the Award be sent for its publication to the Appropriate Government i.e. Deputy Director, Govt. Of India, Ministry of Labour, New Delhi.

M.Y. AMRUTKAR, Presiding Officer & Judge

नई दिल्ली, 15 सितम्बर, 2021

का.आ. 626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र); संरक्षण सहायक, दौलताबाद किला, भारतीय पुरातत्व सर्वेक्षण, औरंगाबाद- (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बालू माधवराव मगर, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय-1, औरंगाबाद के पंचाट (संदर्भ संख्या 29/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.09.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th September, 2021

S.O. 626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2018) of the Labour Court-1, Aurangabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of India, Aurangabad- (Maharashtra); The conservation Assistant, Daulatabad Fort, Archaeological Survey of India, Aurangabad- (Maharashtra) and Shri Balu Madhavrao Magar, worker which was received along with soft copy of the award by the Central Government on 15.09.2021.

[No. L-42025/07/2021-IR (DU)]

D. K .HIMANSHU, Under Secy.

ANNEXURE

IN THE LABOUR COURT-I AT AURANGABAD

(Presided over by M.Y. Amrutkar)

Ex. No.O:

REFERENCE (IDA) NO. 29/2018

CNR NO.MH-LC- 20-002736-2016

Between :

1. The Superintending Archaeologist,
   Archaeological Survey of India,
   Aurangabad Circle,
   1st Floor, D.R.BAMO Campus,
   Near Munciple Hospital Nandavan Colony,
   Aurangabad.

2. The conservation Assistant,
   Daulatabad Fort,
   Archaeological Survey of India,
   Tq. Dist. Aurangabad ... First Party

AND

Balu Madhavrao Magar,
Age: 48 Yrs., Occ: Nil,
C/o. Ubed Khan Abdi Mandi,
Post. Daulatabad,
Dist. Aurangabad ... Second Party

Claim:- Under Section 2A (2) of I.D.Act, 1947

Advocates:

Mr. U.V. Khonde, for the second Party

Mr. D.G. Nagode for the First party

AWARD

(Dtd. 25.08.2021)

1. The second party suo-moto approached before this Court on lapses of 45 days from the date of conciliation proceeding under Section 2A (2) of the Industrial Disputes Act, 1947 for reinstatement in service with continuity and full back-wages w.e.f. 13/12/2010. So also the Deputy Director of Central Govt. by its order dtd. 02/01/2019 has also referred the Reference for its adjudication as mentioned in Schedule.

2. The second party worked as a labour with first party since 2002 for 9 years. The second party had completed 240 days in every calendar year. On 13.12.2010, the first party discontinued the service of the second party without any reason. The second party submitted that the work allotted to him is perennial in nature. He used to clean for premises, cutting grass and maintain entire fort. The second party submitted that first party never issued any charge sheet, memo or notice to him. The termination order is arbitrary, illegal and unfair labour practice. The first party did not offer retrenchment compensation, notice, notice pay to the second party at the time of termination. The first party did not publish seniority list as per Rule 80 of I.D.Act, and not

followed the of `last come, first go`. The second party issued demand notice to the first party, however, the first party did not reply. Hence, the second party approached to Central Labour Commissioner for interference. The first party appeared before the Central Labour Commissioner and put their Say before the authority. The authority tried to settle the matter but first party did not show any willingness to reinstate the second party. Therefore, the Deputy Director, Govt. Of India, Ministry of Labour, New Delhi, referred the matter before this Court for adjudication. The second party lastly prayed that he may be reinstated in service with continuity of service and back wages.

3. The first party no. 1 & 2 filed their Written Statement at Ex.C-3. The first party submitted that the Reference itself is not maintainable on the ground that Industrial Disputes Act, is not applicable to first party. The primary object of the Archaeological Survey of India (A.S.I.) is implementation of the "Ancient Monuments and Archaeological sites and Remains Act, 1958 and "Antiquities Arts Treasurer Act, 1972 on behalf of the Union in fulfillment of the constitutional responsibilities for maintenance of cultural property and monuments. Thus, the activities of first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party do not come under the definition of Industry for the purpose of Industrial Disputes Act, 1947. The first party submitted that second party was working as a casual labour from 2002 at Daulatabad Fort and he was engaged on the basis of as and when work available for cleaning, sweeping, watch and ward removal of rank vegetation etc. The first party submitted that as the activities of first party does not constitute an `Industry` for the purpose of Industrial Disputes Act, 1947, hence, there is no need to comply the provisions under I.D.Act,1947. Therefore, the Reference is not maintainable and there is no question of reinstatement of service to the second party. Hence, the Reference may kindly be answered in negative.

4. After rival pleadings of the parties, following issues are framed by my learned Predecessor at Ex.O:03, I have recorded my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1.	Whether the second party prove that he is `workman` as defined U/s. 2 (s) of the I.D.Act ?	In the affirmative
2.	Whether the second party prove that the first party is an `industry` ?	In the affirmative
3.	Whether the second party-workman prove that he has completed more than 240 days continuous service in each year before termination with first party ?	In the negative
4.	Whether the second party-workman prove that termination order dated 13/12/2010 is illegal and liable to be set aside ?	In the negative
5.	Whether the second party-workman prove that the first party has committed unfair labour practice ?	In the negative
6.	Whether the second party-workman prove that he is entitled for reinstatement in service with continuity along with back wages ?	In the negative
7.	What Award ?	The reference is answered in negative.

REASONS

As to issue No. 01:

5. The first party pleaded that the second party was not come under the definition of workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The first party further pleaded that second party was working as a casual labour with them.

6. As per Industrial Employment (Standing Orders) Act 1946, the workman shall classified as (a) Permanent workman (b) Probationer (c) Badlies or substitutes (d) Temporary workman (e) Casual workman (f) Apprentices. Therefore, I have no hesitation to come to the conclusion that the second party was come under the definition within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. Therefore, I answer Issue no. 01 in affirmative.

As to issue No. 02.

7. The first party came before the Court with a defense that Archaeological Survey Of India (ASI) did not fall within the meaning of `industry` as defined under section 2 (j) of the Industrial Disputes Act, 1947. The learned Advocate for the second party argued that maintenance was carried out through revenue generated from cess of tickets of visitors and tourists at various sites and monuments maintained by A.S.I. and therefore, it was

an organized commercial activities of A.S.I. The work carried out by the second party was of perennial nature of work and it cannot be said to be sole sovereign function of Government of India.

8. The learned Counsel for the second party relied on following authorities:

(1) **Chief Conservator of Forest Vs. Jagannath Maruti Kondhare 1996 (72) FLR 840 (SC)**

(2) General Manager Telecom Vs. S. Shrinivasa Rao 1998 (78) FLR 143 (SC)

(3) Coir Board, Ernakulam Vs. Indira Devi P.S. (SC) 1998 (78) FLR 847 (SC)

(4) Coir Board, Ernakulam Kerala State & Anr. Vs. Indira Devi P.S. 2000 (1) SCC 224 (SC)

(5) State Bank of Indore Vs. Rashtriya Mazdoor Sena and Ors 2003 (98) FLR 1143 (SC)

9. I relied on the Judgment of Supreme Court in the case of **Benglore Water Supply Sewerage of Boards etc Vs. A. Rajappa and others (1978) 2 SSC 213.**

> ``Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad or food), prima facie, there is an 'industry' in that enterprise.``

10. In **Union of India Thru Its Secretary Vs. Surendra Singh Rashtriya** delivered on 19th March, 2019, the Hon`ble Allahabad High Court held that:

> *"From the nature of the work done by the respondent-workmen it cannot be said that the same is of a sovereign nature, therefore, I have no difficulty in holding that the Garden/Horticulture Department of the ASI is an "Industry" as defined in Section 2 (j) of the Act, 1947."*

11. In the case in hand, the nature of work of second party-workman, it cannot be said that the same is of sovereign nature, therefore, I have no hesitation to accept that the department of Tourism of Culture of ASI is an `industry` defined in Section 2 (j) of the I.D.Act. Therefore, I answered issue no. 2 in affirmative.

As to issue No. 03:-

12. The second party came with the case that he had worked more than 240 days in a calendar year. Therefore, he cannot be retrenched without following the provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947.

13. The learned Counsel for the second party relied on the following authorities:-

(1) **Jasmer Singh Vs. State of Haryana and Anr., reported in 2015 (144) FLR 837 (SC).**

(2) **Surendra Kumar Verma etc Vs. The Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi and anr. Reported in 1980 (41) FLR 351 (SC).**

(3) Prashant S/o. Ashokrao Salunke Vs. The Nagpur District Central Co-operative Bank Ltd., reported in 2007 (4) ALL MR 597 (Bombay High Court, Nagpur Bench).

(4) Marathwada Krishi Vidyapith Magasvargiya Sevak Kalyankari Sangh Vs. State of Maharashtra & Ors., reported in 2000 (11) LJ Soft. 43.

14 The Apex Courts held in aforesaid authorities as "the second party who was on daily wages retrenched from service may not have any legal right to be regularised or made permanent in service, but his termination being retrenchment for any reason whatsoever, non-compliance of mandatory provisions of I.D.Act must result into termination being declared as illegal, the provisions of Section 25-F is imperative in character".

The second party workman examined himself by way of filing evidence affidavit vide Ex.U-6. He deposed on oath that he has completed 240 days continuous service in a calendar year. During the cross examination, he deposed that in support of his pleadings, he filed documentary evidence before this Court. The second party further deposed that he has no documentary evidence to show that he worked with first party. Perused record, I found that the second party produced photocopies of muster roll from 1993 to 2006 and documents demanded through R.T.I. from the first party vide Exh.U-14 filed in Ref.(IDA) No. 27/2018, but the said documents neither exhibited nor proved before this Court. The second party workman further deposed that he filed Writ Petition before the Hon`ble High Court of Bombay Judicature at Aurangabad for permanency, in which the Hon`ble High Court directed to first party that in season as and when the work is available to those who are placed senior in the muster roll. However, the case pending before this Court is not

related to permanency. The management witness admitted in the cross examination that they maintained seniority list. But second party has not made any application and asked to first party to produce same muster roll.

15 However, it is settled position of law that initial burden lies on workman whether he worked for 240 days continuously with the first party or not. From the facts and circumstances of the case, I have not found that second party proves that he has completed 240 days continuous service during any calendar year. Therefore, there is no question to follow due process of law for compliance of provisions of Sections 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947. Therefore, I have no hesitation to conclude that the second party is not illegally terminated, therefore, I have answered issues no. 03, 04 & 05 in negative.

As to issue No. 06 & 07

16 As this Court already concluded that the second party was not illegally terminated, therefore, the second party-workman is not entitled for reinstatement in service with continuity of service and full back-wages, therefore, I answer issue no. 06 in negative and to answer issue no. 07, I proceed to pass following Award.

AWARD

(1) The Reference is answered in negative.

(2) No order as to costs.

(3) The copy of the Award be sent for its publication to the Appropriate Government i.e. Deputy Director, Govt. Of India, Ministry of Labour, New Delhi.

M.Y. AMRUTKAR, Presiding Officer & Judge

नई दिल्ली, 16 सितम्बर, 2021

का.आ. 627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई सी आई सी आई बैंक लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 55/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.09.2021 प्राप्त हुआ था!

[सं. एल-12012/66/2011-आईआर-(बी-1)]
डी. गुहा, अवर सचिव

New Delhi, the 16th September, 2021

S.O. 627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Limited and their workmen, received by the Central Government on 16.09.2021.

[No. L-12012/66/2011-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

ID NO. 55 of 2011

In the matter of Industrial Dispute

Between :

Shri Goodwin Edwin,
4 Officers Lane, Cantonment,
Allahabad. (Now dead)

Versus

1. The Vice President,
ICICI Bank Limited, HR Department,
ICICI Tower Bandra Kurla Complex,
Mumbai.

2. The Manager
ICICI Bank Limited,
13, Sardar Patel Marg, Civil Lines,
Allahabad.

AWARD

This award arises out of a reference issued by Government of India in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) as mentioned in notification no. **L-12012/66/2011-IR(B-I) dated 15.07.2011**. The reference is read as follows:-

"Whether the action of the management ICICI Bank Civil Lines Allahabad in terminating the services of Shri Goodwin Edwin Peon-cum-Daftry/Sub Staff w.e.f 31.07.2003 is legal and justified? To what relief the workman is entitled?"

During pendency of this reference proceeding original workman Goodwin Edwin expired and his widow Anita Goodwin has been impleaded in place of deceased workman. It appears the widow of the deceased workman has made a stake for award of pension, referring to the ERO scheme, pension rules of the erstwhile Bank of Madura and family pension rules.

The averment of the claimant workman may be summarized as follows:-

The claimant Shri Goodwin Edwin joined the Bank of Madura Ltd. on July, 1980 as Attender/Peon/sub staff and was confirmed in the services of Bank of Madura with effect from 01.01.1981.

The claimant worked in Bank of Madura Ltd. which later merged with ICICI Bank Ltd. for 23 years one month in toto in both the Banks as stated in the computation of gratuity on ERO. The photo copy is annexed as **Annexure NO.2** to the claim petition.

The Bank of Madura was merged with ICICI Bank in the year 2000 and the Amalgamation Scheme is annexed as **Annexure No.3** to the claim petition.

After merger the ICICI Bank launched ERO (Early Retirement Option) Scheme in the year 2003 –July for maintaining better efficiency in the services along with pensionary benefits only for those who have availed the option given in the year 1995 while working in Bank of Madura Ltd. Photo copy of the ERO scheme sheet is annexed as **Annexure No. 4** to the petition.

ERO In-charge Mr. Zulu and other authorities of the Bank assured the claimant that he was eligible for pension and relieved him from his confirmed employment. Mr. Zulu In-charge of ERO Scheme updated all the formalities by filing the pension form and affixing the photo of the claimant and his wife and taking the signatures at relevant places. This is confirmed by the pension application dated 29.07.2003 wherein the name of the claimant is mentioned. The photocopy of the letter inviting applications for voluntary retirement is annexed as **Annexure No.5** to the claim petition.

The claimant approached the Branch Manager of ICICI Bank Allahabad after a gap of 15 or 20 days to know whether his pension is credited to his SB A/C at the said Branch, but to his surprise he got the reply that the Bank has made him ineligible for pension, on the ground that he had not put in 20 years of service, hence, in lieu of that he would be getting ex-gratia on humanitarian ground and the Branch Manager got the letter signed fraudulently by the claimant. Photocopy of the letter is annexed as **Annexure No.6** to the claim petition.

The claimant approached the said Bank after a gap of a month to know whether the amount of ex-gratia is credited or not to his A/c but he did not get the positive and clear reply, hence the claimant sent letter to ERO In-charge, Regional Manager and met higher authorities, but to no avail. Photocopy of the letter is annexed as **Annexure No.7** to the claim petition.

Original claimant Shri Goodwin Edwin gave legal notice to Assistant General Manager ICICI Bank Ltd. through his counsel for the reason for not sanctioning pension. The photocopy of legal notice is annexed as **Annexure NO.8** to the claim petition.

The letter in response to the legal Notice received through the S. Ramasubramanium and Associates clearly states that the period making the claimant eligible for pension is 10 years as per the bank of Madura Pension Regulation, 1995 Chapter IV whereas the bank has changed it to 20 years, which is against the statutory provision and violation of Section 9A of I.D Act. The photocopy of Regulation is annexed as **Annexure No.9** to the claim petition.

The claimant subsequently wrote various letters (to Reserve Bank of India, Vice- President of ICICI Bank, Assistant General Manager (HRMG)) for fixing pension as service period is more than 10 years. The photo copy is annexed as **Annexure No.10** to this claim petition.

The claimant after making all efforts to settle the issue with the Bank Management without getting benefits finally approached the Assistant Labour Commissioner at Allahabad for Justice. The matter was heard by the Assistant Labour Commissioner on different dates, both the parties put their arguments, finally the Central Government formed an opinion that an Industrial Dispute existed between the management of the ICICI Bank, HR Department in terminating the service of their workman Sri Goodwin Edwin and the workman under sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 did refer the said dispute for adjudication to the Central Government Industrial Tribunal cum-Labour Court, Kanpur. The photocopy of the order is annexed as **Annexure NO. 11** to the claim petition.

The petitioner had taken early retirement on assurance from the responsible authorities of the Bank that he would be getting pension if he accepted the ERO Scheme and on that assurance he took early retirement but he was deprived of pensionary benefits, he has been fraudulently thrown out of the job, the petitioner was repeatedly claiming through letters, legal notices, and meeting high authorities like regional manager, branch manager, and zonal head, ERO, In-charge but so for no positive results, finally he has been forced to submit his pleadings before this Tribunal. Moreover no right thinking person would opt for ERO forgoing the privilege of pension at the late stage of his life leaving his family liabilities unsecured.

It is submitted that the ICICI Bank had not followed the provisions of erstwhile Bank of Madura Ltd. Employee pension regulation, 1995 as it is, on the contrary they have implemented the said provisions of Banking Regulation 1995 as per their requirement.

It is submitted that many letters were written in this regard to persons of authority in the institution.The claim for the pension was averted at first instance.

The petitioner is eligible for reinstatement on the ground that he was fraudulently thrown out of the job for the reason that as per Bank of Madura Ltd. Banking Regulation 1995 the minimum requirement for pensionary benefits is 10 years, the petitioner having service record of 23 years one month by reducing loss of pay it comes to 19 years 10 months which is much more that what is needed for pension, moreover no Institution is empowered to amend the basic structure of the provision of Employee Regulations 1995 which would be considered as violation of statutory provisions.

It is submitted that the scheme came into existence in the month of July, 2003 and in the computer print out and worksheet having the details of the scheme it was nowhere mentioned about the length of service required for pension. Under Section 9-A I.D Act no Employer who proposes to effect any change in the condition of service applicable to any workmen in respect of any matter specified in the fourth schedule can do so without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected with regard to contribution paid, or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, hence making the optee wrongfully in eligible for pension.

It is submitted that in Chapter IV in the said regulation, that forfeiture of entire service making the employee eligible for pensionary benefits amounts to termination, hence it is a clear case of illegal termination which attracts section 2A of the Industrial Disputes Act.

It is also submitted that the facts regarding loss of pay came to the knowledge of the petitioner only when the petitioner issued legal notice to the Assistant General Manager ICICI Bank Ltd. Chennai through his counsel.

It is submitted that the petitioner became aware only after issue of legal notice and none came forward from the Institution ICICI Bank Ltd. to help and advise the petitioner at the outset when their help and advice was most needed he being a Class IV employee Dafftury and an illiterate person.

It is submitted that the petitioner accepted ERO under the instructions of his superiors that he would be getting pension which has been denied and to safeguard its interest the Institution very tactfully got the signature of the petitioner on the letter assuring that in lieu of pension he would be getting ex-gratia on humanitarian ground and the same is also not credited to his account,which shows that the institution has fraudulently done forfeiture of the entire service of the petitioner thus terminating him from the job, thus attracting the provision of Section 2A of Industrial Disputes Act.

The claimant subsequently wrote various letters (to Reserve Bank of India, Vice President of ICICI Assistant General Manager (HRMG)) for fixing pension as service period is more than 10 years. After introduction of the ERO Scheme on assurance he took early retirement but up till now he has been deprived of pensioner benefits.In the claim application in the prayer portion the deceased workman had prayed for sanction of pension in his favour.

Written statement was submitted by the ICICI Bank with averments stating that this is a case of voluntary retirement by the petitioner and not a case of termination of service. O.P has challenged

maintainability of claim for pensionary benefits as prayed by workman. It is stated by O.P that only those employees who had completed 20 years of service and had opted for pension were entitled to get pension. It is averred that the petitioner was absent from duties for 3 years 3 months and 17 days during his service period and had not completed 20 years of qualifying of service. It is further submitted by the O.P that the claim for pension is not maintainable under section 2A of Industrial Disputes Act.

The points for consideration in this proceeding are as follows:-

1. Whether the deceased claimant petitioner had rendered service for sufficient length and was entitled for pensionary benefits.
2. Whether substituted claimant being the widow of the deceased claimant is entitled to get family pension.
3. Whether the claim of pension as made by claimant is maintainable.

Point No. 1 and Point No.2 are addressed by the discussions stated below:-

In the written counter filed on behalf of the O.P ICICI Bank it is stated that the claimant had not completed full 20(twenty) years of qualifying service so as to enable him to claim for pension O.P has referred to a letter dated January 6, 2003 at paper 23/12 issued by the ICICI bank to the claimant stating that petitioner had availed 1172 days of leave on loss of pay for which length of his service stood reduced to period less than 20 years. The stand taken by O.P is found to be erroneous and fallacious. At this stage it is stated that though the O.P bank has stated that the deceased claimant had remained absent for the period of 3 years and three months and seventeen days it is seen that no specific order has been issued on behalf of the employer bank that the said period shall not be counted in favour of the claimant for sanction of pension. Chapter IV rule 14 of the rules governing the employees of the erstwhile bank of Madura Ltd. is read as follows:-

"Qualifying Service- Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank of the date of his retirement shall qualify for pension".

It is uncontroverted that erstwhile Bank of Madura Ltd. merged with ICICI bank Ltd. as per memorandum. At para 17 of the written statement it is mentioned that the deceased Goodwin Edwin was absent from duty for 3 years 3 months 17 days on loss of pay which is not counted for calculating 20 years of service. The deceased Goodwin originally had joined the job in erstwhile Bank of Madura (in short, the BOM) which subsequently merged with ICICI bank Ltd. Chapter IV rule 14 of the erstwhile Bank of Madura employees' pension regulation makes provision for allowing pension for the employee who rendered minimum 10 years of service in the bank on the date of his retirement. Rule 4 of the Early retirement option 2003 (Here-in-after stated in short as ERO) floated by the ICICI Bank Ltd. is read as follows:-

"All permanent employees of the Bank who have completed at least 7 Years of Service and are 40 years of age as on July 31, 2003 will be considered eligible to opt for the benefits under the Scheme. For the purpose of this clause, the services rendered by the permanent employees in the organisations merged with the Bank will be considered as eligible service in terms of respective schemes of amalgamation."

8(A) of the aforesaid rule is read as follows:-

One time Cash Benefit

An Eligible Employee shall be entitled to the following benefit, subject to applicable tax deduction at source:

(i) 3 months' salary for every completed year of service or

(ii) Salary for the Remaining Months of Service, whichever is less.

(For the purpose of this clause, any fraction of the year of service of 6 months and above will be rounded off to the next higher unit, e.g. completed service of 10 years and 7 months as on July 31, 2003 will be considered as 11 years of completed service for computing benefits under the Scheme.)

The above payment is subject to an overall limit of Rs 20 lac (Rupees Twenty Lac) for employees in the grades of Joint General Manager and below, and Rs 25 lac (Rupees Twenty Five Lac) for employees in the grades of General Manager and Senior General Manager.

8(B) and 8(D) of the aforesaid rules are as follows:-

8(B) Annuity Benefit

Subject to applicable tax deduction at source, if the eligible Employees so desire, provided there are adequate number of such Eligible Employees, the bank may consider buying an annuity for the benefit of Eligible Employees out of the total benefit amount mentioned in Clause 8A payable to Eligible Employees, less applicable tax, if any. The annuity benefit will be payable monthly for a certain specified period.

8(D) Pension Benefit

The Eligible Employees who have opted for pension benefit as per the erstwhile Bank of Madura Employees' Pension Regulations, 1995, will be eligible for the same as per the terms and conditions of the said Regulations.

On cumulative reading of the above stated rules it is crystal clear that deceased Edwin Goodwin was to be considered for pensionary benefits under ERO as per the bank of Madura pension regulation by the ICICI bank. Even after deducting the period of leave of 3 years 3 months 17 days Goodwin Edwin was legally entitled to get pension under ERO. The period 19 years 8 months 13 days of service rendered by Good win Edwin as admitted in 4(C) of written statement can be read as 20 years in favour of deceased claimant Goodwin Edwin making him entitled to get pensionary benefits. The point is answered in favour of the deceased claimant and against the management.

Point No. 2

In Para 4(A) of written statement the O.P management had admitted in the following language:-

"It is submitted that the Petitioner Sri Godwin Edwin joined the services of the bank on July 1, 1980 as Sub Staff and while he was working at Allahabad Branch of ICICI Bank had on his volition opted for early retirement under Early Retirement Option (ERO) Scheme 2003 during July 2003. It is submitted that the petitioner was paid all his benefits including Provident Fund, Gratuity and applicable Leave encashment."

In the foregoing paragraph after cumulative discussion of the Bank of Madura employees' pension regulation and ERO 2003 of the ICICI bank Ltd it has been concluded that Goodwin Edwin was legally entitled to get pension form ICICI bank Ltd. Presently substituted applicant Anita Goodwin is widow of deceased claimant Goodwin Edwin. As per Chapter 7 rules 40 and 41 widow Anita Goodwin with her other sons & daughter below 25 years is legally entitled to get the pensionary benefits from ICICI bank Ltd. For the sake of clarity it can be stated here that ICICI bank management is bound to honour the provisions of BOM Employees' Pension regulation. In view of the discussions stated above it can be concluded that substituted claimant Anita Goodwin is legally entitled to get pensionary benefits from the ICICI bank Ltd. The point is answered in favour of the claimant and against the OP management.

Point 3

"Whether the claim of pension as made by claimant is maintainable"

At the outset on behalf of ICICI bank an objection was raised against the claim application of pension stating that the same did not form part of the reference received in this Tribunal. It may be correct that the claim of pension made by Goodwin Edwin has not been specifically mentioned in the reference but the claim of pensionary benefit can be stated to come within the wider ambit of "to what relief the workman is entitled". At this point it cannot be brushed aside that denial of pensionary benefits to the deceased workman amounted forfeiture of his past services under the Bank of Madura Ltd (transferor Bank) and also under the ICICI Bank (the transferee Bank).

It was held by Hon'ble High Court of Allahabad that the Labour Court has to act according to the reference and cannot go beyond it. This authoritative pronouncement appears to have been made in the context of the circumstances dis-similar from the case in hand. In Tata Iron and Steel Company Ltd v/s state of Jharkhand it was observed by Hon'ble Supreme Court as follows:

"**It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/exact nature of "dispute" between the parties. In the instant case, the bone of contention is as to whether the Respondent workmen were simply transferred by the Appellant to M/s Lafarge or their services were taken over by M/s Lafarge and they became the employees of the M/s. Lafarge. Second incidental question which would follow there from would be as to whether they have right to join back the service with the Appellant incase their service conditions including salary etc. which they were enjoying with the Appellant are not given or protected by M/s Lafarge? If it is proved that their service**

conditions are violated, another question would be as to whether they can claim the service benefits/protection form M/s. Lafarge or they have the right to go back to the Appellant?

It follows from the above that the reference in the present form is defective as it does not take care of the correct and precise nature of the dispute between the parties. On the contrary, the manner in which the reference is worded shows that it has already been decided that the Respondent workmen continue to be the employees of the Appellant and further that their services were simply transferred to M/s Lafarge. This shall preclude the Appellant to put forth and prove its case as it would deter the Labour court to go into those issues. It also implies that by presuming so, the appropriate Government has itself decided those contentious issues and assumed the role of an adjudicator which is, otherwise, reserved for the Labour Court/Industrial Tribunal.

Forfeiture of past services of the workman can be treated as illegal termination which will fall within domain of the reference constituting the Industrial dispute. In view of such a scenario the claim of pensionary benefits made by the deceased workman does not fall beyond the ambit of the reference. The reference is received on 01.08.2011 and during the pendency of reference proceeding Goodwin Edwin died. Prolongation of the reference proceeding cannot reasonably be ascribed to any dilatory trick of the deceased workman. Even for the sake of substantial justice hindrance of technicality can be ignored.

On behalf of the ICICI bank it is vehemently submitted that the deceased workman retired on his opting for ERO scheme and sent legal notice in the year 2004-05 and thereafter he slept over the matter till 2011 and he sought his claim for pension which by that time had become stale claim. Indirectly it is submitted that the claim for pension of the claimant workman stands barred by limitation.

On behalf of the O.P ICICI Bank case law pronounced by Hon'ble High Court, Allahabad in the matter of Dr. JawaharLal Rohatgi Memorial Eye Hospital vs State of U.P and Others 2013(4) ADJ415, 2013 (4) ALJ 237, [2013(138)FLR11], 2013LLR864, (2014)1 UPLBEC158 was referred.

In the aforesaid case law it is observed by Hon'ble High Court, Allahabad

"The Court is of the opinion that it was not expedient for the State Government to refer an old and stale dispute. The Court accordingly finds that even though there is no period of limitation, nonetheless, the power has to be exercised within a reasonable period. The Court finds that there is nothing to indicate as to why the workman could not approach the authority under the Industrial Disputes Act to refer the dispute earlier. ''

It appears that the aforesaid observations have been made by Hon'ble High Court of Allahabad in a context completely at variance with the facts of this case.

It is well settled that limitation is no strict bar against the claim of a workman though raising the claim after a long lapse of time may result in defeat of claim. In the present case it is seen that deceased workman Goodwin Edwin opted for retirement under ERO scheme and had sent legal notice to the management of the ICICI bank. From the discussion in the foregoing paragraph it has been concluded that deceased workman Goodwin Edwin was legally entitled to get retiral benefits which were unjustifiably withheld by the management of the bank. Law is well settled that pension is no bonanza and it is indefeasible right, denial of pension which is normally given month wise causes starting of fresh period of limitation.

In view of such a scenario, the stand of ICICI bank Ltd. that the claim of pension made by the deceased workman was a stale claim is legally unacceptable. The point is answered against ICICI bank and in favour of the deceased workman and his surviving widow Anita Goodwin.

Whether the claim of pension of deceased is hit by **res-judicata.** It is submitted by ICICI bank that in the year 2005 deceased workman had filed complaint no. as CC-281/2005 before district consumer disputes forum which was dismissed not pressed. It may be stated here that dismissal of the consumer complaint as not pressed can never be read as bar against the claim of pension made by Late Goodwin Edwin by doctrine of **res-judicata** as averted by the ICICI bank Ltd. The point is answered in favour of the deceased workman and his widow Anita Goodwin and against the ICICI bank Ltd.

Whether the claim of pension is hit by any provision of law. It has been submitted by ICICI bank that the claimant opted for retirement on ERO scheme 2003 and as such his acceptance can be treated as termination. It may be correct that voluntary retirement cannot be read as retrenchment in strict sense but it cannot be brushed aside that claimant Goodwin Edwin (now dead) was entitled to get pension as per the provisions of the Bank of Madura employees' pension regulations and the ERO scheme 2003, as such the stand of the ICICI bank on these points is legally unacceptable.

In Punjab & Sind Bank and Anr. Vs S. Ranveer Singh Bawa and Anr. reported in AIR 2004SC2334, it was held by Hon'ble Supreme Court that the respondent of that case was debarred from resiling from scheme of voluntary retirement for his earlier conduct of accepting the benefits under the Scheme.

Right from the beginning the deceased workman had prayed for sanction of pension in his favour under ERO 2003 read with the Bank of Madura Employees Pension rules. Needless to say no order has been brought to the notice of this Tribunal that the period of absence from duty 3 years 3 months 17 days was to be treated as a period not to be reckoned towards calculation of qualifying service. Even excluding that time period the deceased workman had put the required qualifying service period entitling him to get pension. The claim of pension of deceased workman and consequential family pension in favour of the widow cannot be defeated on some technical triviality.

The point is answered against the O.P.

The arrear amount of pension and the arrear amount of family pension shall carry interest at the rate of 7% simple per annum from 31st July 2003 upto publication of this award and whole amount shall deposited in the bank account of the widow Anita Goodwin within 30 days from the date of publication failing which the widow shall be entitled to get commercial rate of interest claimed by the Bank from its customers till the whole arrear amount is cleared.

The reference is answered accordingly. In the factual scenario the parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2021

का.आ. 628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 340/2013) को प्रकाशित करती है।

[सं. एल-12012/05/2014-आईआर-(बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 17th September, 2021

S.O. 628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 340/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.2, Chandigarh shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/05/2014-IR (B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 340/2013

Registered on:-19.03.2014

Ashok Kumar S/o Ramphal, R/o Village Naljeta, District Rohtak, Haryana ... Workman

Versus

General Manager, Punjab National Bank, Main Head Office, Rohtak, Haryana. ... Management

AWARD
Passed on:-02.09.2021

Central Government vide Notification No. L-12012/05/2014-IR(B-II) Dated 06.03.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of the General Manager, Punjab National Bank, Head Office, Rohtak(Haryana), in terminating the services of Sh. Ashok Kumar S/o Shri Ram Phal, Ex-Workman w.e.f. 31.08.2011 is just and legal? What relief the workman is entitled to and from which date?"

1. Both the parties were put to notice and claimant Ashok Kumar filed statement of claim, with the averment, that he was appointed on 01.05.2010 as workman and worked in the Punjab National Bank, Village Bakheta, Rohtak continuously and regularly without any break in service and was paid salary on monthly basis and his last drawn salary was Rs.5,000/-. The services of the workman were illegally terminated on 31.08.2011 without any compensation and the workman was not paid salary for the last six months. He has completed more than 240 days continuous service with the management and the management did not complied with the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 even fresh incumbents were taken on the same job. It is therefore, prayed that the management be directed to reinstate the workman along with all back wages and along with interest @18% from the date of termination till the date of actual payment.

2. Management has filed its written statement, alleging therein that there existed no relationship of master-servant between the management and workman at any point of time. There was no administrative, economic and disciplinary control of the management over the workman. The present reference deserves to be dismissed on the ground that the workman was never engaged after following the requisite procedure of recruitment applicable to the employees of the respondent-bank. The present reference deserves to be dismissed on the ground of mis-joinder and non-joinder of proper parties and the workman has failed to implead necessary parties. Since the workman was not in the employment of the management so the question of payment of his salary amounting to Rs.5,000/- does not arise. It is further denied that the workman was ever engaged/recruited by the respondent-bank. No appointment letter or termination letter was ever issued by the management to the workman. Since the workman was not in the employment of the management so the compliance of the provisions of Section 25-F, 25-G and 25-H of the ID Act, 1947 does not arise. It is therefore, prayed that the claim of the workman may kindly be dismissed with exemplary costs in the interest of justice.

3. Claimant/workman Ashok Kumar has submitted his affidavit as Ex.WW1/A and cross-examined by the learned counsel of the management.

4. Management has submitted affidavit of witness Sanjay Sood Manager, Punjab National Bank, Circle Office Rohtak who submitted his affidavit as Ex.MW1/A and cross-examined by the learned counsel of the workman.

5. I have heard the learned counsel of the workman Sh. Arun Batra as well as learned counsel of the management Sh. Saurav Verma and perused the file.

6. The first contention raised by the learned counsel of the management relates to the claimant being not a workman as he is not an employee of the bank-management. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

7. Secondly learned counsel of the management argued that there is no relationship of employer and employee between the management and claimant because claimant Ashok Kumar was never appointed as a Bank-Mitra by the bank-management from 01.05.2010 as is alleged in the claim petition. Thus, the real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractor is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481*** as well as ***Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.***

8. Question remains to be seen whether claimant/workman has proved that he was directly engaged by the respondent-management as workman on 01.05.2010 and rendered his services till the alleged retrenchment/termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the respondent-management. In this connection, workman Ashok Kumar has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Sanjay Sood, Manager has categorically stated in his evidence that workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

9. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

(1) Whether the principal employer pays the salary instead of contractor and

(2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

10. Learned counsel of the workman contended that payment of salary was made by the management as alleged in the claim petition as well as affidavit filed and it was the bank-management who virtually paid the salary. Learned counsel of the workman contended that all the documents are in possession of the management and management has not submitted any documents relating to the engagement as well as salary by saying that it has not employed the workman directly instead he was engaged by M/s Society for Educational Welfare and Economic Development(SEED) in consultation with M/s Tata Consultancy Services(TSP) for carried out the function of business correspondence. So far as the payment of salary by the management-bank is concerned, learned counsel of the workman contended that payment is given by the bank which may be through the above mentioned agency. Claimant Ashok Kumar has accepted in his cross-examination that he was paid through cheque which was given by the coordinator to him. This witness has further stated that he cannot say about the issuing authority of the cheque paid to him in the form of salary. Thus, this witness himself is not aware about the manner and mode of payment by the Punjab National Bank directly. As per the learned counsel of the workman, it was the bank-management who directly paid the salary to the workman amounting to Rs.5,000/- per month. I am not convince with the argument of the learned counsel of workman because there is nothing on record in the form of documentary evidence or any other substantive evidence which could prove that it was the bank-management who issued a cheque to the claimant. In fact, the evidence of the workman in itself does not conclusive and reliable to observe that bank-management directly paid the salary to the claimant who was working as Bank Mitra.

11. So far as the question of controls and supervision is concerned. Workman has categorically stated that his work was supervised by the officials of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

Thus, if the work of the claimant/workman is supervised by the bank, for the sake of argument, it does not confer any right to the workman in the light of above judgments of the Hon'ble Court.

12. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the demand of salary, attendance register or work done by the claimant/workwoman during the course of alleged employment with the management. The evidence of workman Ashok Kumar given during the course of cross-examination does not convince this Tribunal with respect to the direct employment by the management. According to the claimant he has neither submitted any application for appointment nor interviewed by the bank-management instead he was appointed by the coordinator of the bank being an employee of the bank. He has further stated that he used to sit with his coordinator and attendance was marked therein. He is not aware that his attendance was ever seen by the bank-officials. In such scenario and opportunity given by the Tribunal workman utterly failed to produce any documents in order to prove that he was directly engaged by the management-bank.

13. Undoubtedly, management of Punjab National Bank has taken a plea that he was appointed by M/s. Society for Educational Welfare and Economic Development (SEED) in consultation with M/s Tata Consultancy Services (TSP), for carried out the function of business correspondence but nothing is brought on record in the form of documents that there was an engagement of M/s Society for Educational Welfare and Economic Development (SEED) in consultation with M/s Tata Consultancy Services (TSP) for the purpose as alleged in the written statement. The witness examined by the management namely Sanjay Sood, Manager has accepted in his cross-examination that he has no record with respect to the engagement of M/s Society for Educational Welfare and Economic Development (SEED) in consultation with M/s Tata Consultancy Services (TSP), whatsoever with respect to the employment of the workman. He has denied that Punjab National Bank has not any supervisory control on the workman. According to this witness, management has not issued any notice nor paid any compensation because workman was not an employee of the management-bank. Thus, the evidence given by the management with respect to the engagement of M/s Society for Educational Welfare and Economic Development (SEED) in consultation with M/s Tata Consultancy Services (TSP) is also not proved by any documentary evidence but initial burden lies with the workman to prove the factum of direct employment by the bank-management as is held by the Hon'ble Supreme Court in the case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh (supra) case,*** as well as ***Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (Supra) case.***

14. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the

management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal (Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 of 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** This Tribunal is of the concerned opinion that if the relationship of employer and employee is not proved within the four corners of Law then question of consideration of reinstatement or compensation or notice in lieu of compensation under Section 25-F is not required to be discussed in detail. In fact, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days work in the management-bank before the preceding year of the alleged retrenchment. Hence, in the light of the specific denial by the management for rendering 240 days service before termination, burden lies on the workman to prove this fact. The Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani, (2002)3 SCC 25,*** has held that if there is no proof of receipt of salary or wages of 240 days or order or record in this regard was produced then it is not sufficient for the Labour Court to hold that workman had worked for 240 days as claimed.

15. Conclusively, it may be observed that workman may have rendered his services under the of M/s Society for Educational Welfare and Economic Development(SEED) in consultation with M/s Tata Consultancy Services(TSP), whatsoever, but there is nothing concrete reliable evidence i.e. documentary proof that he was engaged by the bank-management directly and rendered his services under the direct control and supervision of the bank-management and accordingly paid by the management-bank as is alleged in the claim petition legally the initial burden lies with the workman to prove that he was working with the bank-management but he utterly failed to prove this fact as such, the workman is not liable for any relief from the Tribunal and the reference is answered accordingly.

16. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2021

का.आ. 629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 214/2011) को प्रकाशित करती है।

[सं. एल-39025/01/2021-आईआर-(बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 17th September, 2021

S.O. 629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 214/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen.

[No. L-39025/01/2021-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.214/2011

Registered on:-22.09.2011

N.K. Sabhlok, S/o Sh. Parma Nand Sabhlok,
R/o House No.45-A, Model House,
near Model Town Market, Ludhiana. ... Workman

Versus

Central Bank of India, Zonal Office, Sector 17-B,
Chandigarh through its Deputy General Manager. ... Management

AWARD

Passed on:-26.08.2021

1. The workman N.K. Sabhlok has directly filed the statement of claim under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act) for setting aside the order of removal and for reinstatement and for consequential benefits.

2. The brief facts relevant for deciding this claim petition are relates to the absence of the claimant/workman due to transfer to some other place against the rules and regulations causing serious mental illness. It is further alleged that on the pretext of false allegation, a charge-sheet dated 20.10.1995 is issued and after a false enquiry, he was dismissed from service. It is therefore, prayed that order of dismissal/removal of the claimant be set aside and he be reinstated with all consequential benefits.

3. Management-Central Bank of India has filed its written statement, denying the facts alleged in the claim petition alleging therein that the dismissal of the workman was after due enquiry and opportunity given to the claimant. It is alleged that he did not duly participated in the proceeding, forcing the enquiry officer to submit the report and after sufficient opportunity for personal hearing, dismissal order by way of punishment has been passed by the competent-authority. It is further alleged that this Tribunal got no power to entertain claim filed by the claimant and the claim petition is liable to be dismissed.

4. This Tribunal vide its order dated 14.08.2019 framed issues regarding the fairness of enquiry, gravity of punishment and relief and fixed for evidence of the claimant/workman.

5. Learned counsel of the workman Sh. Raj Kaushik on 04.08.2021 has made a statement that workman as well as his wife have expired and he is unable to pursue the case because none had approached him for further proceeding. He has also made a statement that there is no legal-heir of the deceased-workman as per his information is concerned. Therefore, this case has become of no evidence case. It is also clarified that passing of the no dispute award/no claim award would not bar the LRs of the deceased-workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim.

6. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

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